THE LAWYERS LIGHT:

OR,

A due direction for the ſtudy of the Law; for

Methode.
Choyce of Bookes moderne.
Selection of Authours of more antiquitie.
Application of either.
Accommodation of diuers other vſefull requiſits.

All tending to the ſpeedy and more eaſie attayning of the knowledge of the Common Law of this Kingdome.

With neceſſary cautions againſt certaine abuſes or ouerſights, aſwell in the Practitioner as Student.

Written by the Reuerend and learned profeſſor thereof, I. D.

To which is annexed for the affinitie of the Subiect, another Treatiſe, called

The Vſe of the Law.

¶ Imprinted at London for *Beniamin Fiſher*, and are to be ſold at his ſhop in Alderſgate ſtreet, at the ſigne of the *Talbot*. 1629.

TO THE READER.

Courteous Reader,

Preſent vnto you here two children, the one whereof hath an Authour vnknowne; The other a Father deceaſed; Both Infants; both Orphans; and both ſo like, as if they were *Gemini horoſcope uno.* The Law enioynes you to keepe them; and their deſcent deſerues it: If you keepe, and cheriſh them in their infancie, the Law by whoſe letters

of commendations they are committed to your tuition, will keepe and preſerue you and yours, your perſons, goods, and good names from violence, depredation, and detraction, vnto poſterity. Caſe them in what faſhion you pleaſe: And put them into what livories you like beſt; They are both ſo ſeaſoned, that no weather can alter their conſtitutions: And both ſo ſolid that no teſte can diſrepute their perfections; Indeede they were intended for generall good. For he that will calculate their Natiuitie, ſhall by a true Iudiciall finde in either a plentifull promiſe of publique profit and fundamentall fabrique both of the ſtudy and vſe of the Lawes of this Realme. It is a duty we owe to the knowne

Author

Authour though deceaſed, and a charity to the Authour whoſe modeſty conceales his name, to communicate to the generall what was ſo collated in their particular, and ſo legaterily provided for their common behoofe; which not as *proximiores ſanguinis*, or proper executors of the will of the deceaſed, but as creditors to whom the adminiſtration of their good intentions for the publicke is committed, we do now publiſh and commend to all Students in the Lawes, and others which ſhall deſire to enable their iudgments in this kinde.

In praiſe of the worke.

AS after paine in digging of the Mould,
Long time is ſpent in ſeuering the Oare
From the mixt earth; at length refined Gold
Is by the Artiſt wrought, by which his ſtore
Is much encreaſed and the common good.
So by this Booke if rightly vnderſtood
And priſed at full worth, the Reader may
Obſerue the Authors labour, who hath drawne
From the deepe Maſſe of Law, an eaſie way
To make the Student perfect; and doth pawne
His credit on't, Peruſers may be bold
To ſhew it for he knowes the Touch will hold.

W. T.

A Another

Another.

WHen Criticks ſhall but view the Title, they
Will carpe at this great Enterpriſe, and ſay,
It was too boldly done, thus to comprize
In a ſmall Volume, Law, and a true ſize
To ſet vpon it; but the learned will
Excuſe his little Booke, and praiſe his skill,
His ayme being onely to inſtruct the youth,
Not to controll the Iudge, or wrong the truth:
For he well knowes, Caſes with time may change,
And that prooue common which before was ſtrange.

I. S.

THE TABLE.

ARISTOTLE in the firſt booke of his Topickes expreſſing the meanes, wherby in euery facultie or ſcience Intellectuall, reſting vpon diſcourſe of reaſon, Men might abound in matter apt for Argumentation, and might bee furniſhed with copy of Reaſon fit for the proofe or diſproofe of things called into debate, in ſuch the ſciences by them profeſſed, expreſſeth a fowrefold obſeruation,

1. *Quarum vna* (as he ſayth) *eſt in propoſitionibus eligendis.* *Ariſt. Top. lib. 1. cap. 12. 13. 14.*

2. *Altera in diſtinguendo quot modis quicquid dicatur.*

3. *Tertia in differentijs inueniendis.*

4. *Quarta in ſimilitudinis cognitione & ſcientia.*

All which are notable inſtruments of knowledge, greatly profitable, yea neceſſary for the obtayning of all ſuch ſciences as doe depend vpon reaſon: and ſo conſequently much auayleable to be obſerued in the ſtudy of the Lawes of this Land, which are grounded vpon the depth of Reaſon, and inueſted often times by the name of Reaſon, in our Reported

Caſes, and ruled Authorities of the ſame: 11. *Hen.*7. 24.*b.* 13.*Hen.*7.23.*b.Com.Colth.* 270.*b. Com.Brown.* 140.*b.* 27.*Hen.*8.10.*a. Montague.*

Of which fowre Principles, purpoſing (for direction of ſtudy) to ſay ſomewhat, in order, as they are afore propoſed.

It is to be conſidered that the firſt of them being *Propoſitionum electio*, containeth the Election, choice obſeruation, and collection of all receiued Principles, Propoſitions, Sentences, Aſſertions, Axiomes and Reaſons, importing eyther certainety of truth, or likelyhood of probability.

Wherein firſt *Ariſtotle* giueth precepts to collect them, and then after giueth counſayle, ſo to digeſt them, as that they may at all times bee ready for our vſe.

Wherefore heereof intending an ample diſcourſe, it ſhall be requiſite to follow the ordinary and beſt Method, by Definition, Diuiſion, and the due ſpeculation of their Cauſes, whereby may be manifeſted what they are, of how many kinds they are, the diuers manners of collection of them; and laſtly, the end, ſcope, and vſe, whereunto they tend, and the profit enſuing by obſeruation of the ſame.

That firſt therefore the names, by which in our Law they haue vſually beene called, might bee made manifeſt before their nature be diſcouered (*Primò enim de nomine conueniat*) it may with little labour eaſily appeare, that ſundry are the titles or names giuen in the volumes of Reports and other writings of the Law, vnto ſuch propoſitions as doe remaine as reaſons of reſolued caſes.

Sometimes

Sometimes they haue beene called *Grounds*, See in the 30. *Hen.* 8. 44. *b.* *Dyer numero* 30. it is ſaid, *Eſt une auter Grounde in tenure in Chief. S. Il. doet eſte immediate del Roy ; et il convient comencer, et prend ſon original creation per le Roy meſme, et per nul de ſes ſubiects.* So likewiſe ſpeakes *Rede.* 5. *Hen.* 7. 23. *b.* *Eſt bone Ground in Treſpas, Diſcontinuance vers un eſt Diſcontinuance vers touts,* with infinite ſuch other. Grounds. *Vide* 17. H. 7. 13. *a.* *Dauers Com.* 121. *b.* *Stamford.*

Sometime they haue beene called *Maximes* ; for ſo ſaith *Forteſcue* in 34, *Hen.* 6. 33. *a.* *Eſt un Maxime en noſtre Ley, Que in chacun action perſonal, le Nonſuite del un ſera le Nonſuite de ambideux, fore priſe in tiels caſes que ſont except per ſtatut.* Likewiſe ſaith *Knightley* 19. *Hen.* 8. 38. *a.* *Dyer numero* 51. *Eſt un Maxime, Que un action ſera touts foits conceiue ou le plus meliour trial, et notice del fait poit eſte conus ; et ſpecialment lou de tort eſt perſonal,* with diuers ſuch like. Maximes.

Sometimes they are called *Principles*, for ſo in the 8. *Hen.* 7 4. *a.* it is ſaid, that it is *un Common Principle, que Terre* (*S. Eſtate de frank tenant*) *ne pas ſans Livery de ſeiſni.* Likewiſe ſaith *Sanders* in the *Com. Colthurets Caſe* 28. *b.* *Il ad eſte temis come Principle, Que quand un fait Livery de ſeiſni que ſon Livery ſera pris plus fortment vers luy.* Principles. *Vide Com.* 345 *a.*

Somtimes they haue beene called *Eruditions*. In ſuch ſort ſaith *Keble*, in 11. *Hen.* 7. 15. *a.* *Ceo ad eſte un erudition, Que le partie navera Capias ad ſatisfaciendum, mes ou Capias giſt in l'original:* And ſome in 29. *Hen.* 8. 40. *a.* *Dyer numero* 66. ſaith, *Iuſtices Il eſt une Common Erudition, Que in cel Countie lou le* Eruditions. *Vide* 14. *Hen.* 8. 28. *a.* *Pollard* 24. *Hen* 8. 40 *Dyer. nu* 66. 3 Ed. 4. 7 a. *Lit.* *Vide* 33. *Hen.* 6. 54. *a.* 44. *Ed.* 3. 34. *b.*

le tort commence, l'action ſera porte.

Lawes poſitiue. Moreouer, ſometimes for their firmneſſe they haue beene called *Lawes Poſitiue*, for ſo ſpeaketh *Belknap.2. Rich. 2. Fitzh. Accompt 45. Il eſt ley poſitive, Que home navera damages in breve d'accompt.*

Lawes. Sometimes they are inueſted by the title of Law it ſelfe; for in ſuch manner it is ſaid *Tempore Ed. 1. Fitzh. Grant. 41. Lex eſt, cuicunque aliquis quid concedit, concedere videtur, & id ſine quo res eſſe non potuit.* And ſo *Bracton* ſaith, *9.Hen.6.59.b. Iay priſe pur ley, Que ſi home plede un plee et pregne un proteſtation; et puis ſon plee eſt troue encounter luy, il naver unque advantage de ſon proteſtation.* Of which manner ſpeeche there are manifold examples.

Vide 9.Hen.4. 59.b.Paſton.

So that be they named *Grounds, Maximes, Principles, Eruditions, Lawes Poſitiue, Lawes, Rules* or *Propoſitions*, or by whatſoeuer other name they bee called, let vs now ſeeke the nature of them by their Definitions.

Li.1.ff.de Reg. Iuris. *Paulus* the ancient Romane Lawyer thus defines a *Principle* or Rule of law: *Regula Iuris, rem quæ eſt, breviter enarrat. &c.*

Com.Colth.27.b. If we doe reſpect the originall thereof together with the effect it yeeldeth; *Morgan* in the Commentaries of *Plowden*, thus defineth it: A maxime is the foundation of Law, and the concluſion of Reaſon: for Reaſon is the efficient cauſe thereof, and Law is the effect that floweth therefrom.

Such of the Civilians as in the deſcription of a Rule of Law, Doe onely reſpect the manner of the Collecting of them, from particular caſes or circumſtances

ſtances doe thus affirme: *Regula Iuris eſt multorum ſpecialium per generalem concluſionem brevis comprehenſio.* Or as *Ioachimus Hopperus* in his firſt booke *de Iuris arte*, though diſagreeing in words, yet one in the ſenſe with the former; *Regulæ Iuris ſunt quædam coniectiones tantum, & breviaria ex pluribus ſpeciebus in unum per commune aliquod collecta.* Another of them in this manner, *Regula eſt ſententia generalis, quæ ex plurium legum mente à Iuris conſultis notata atque animadverſa, paucis verbis ſummam earum conſentionem & tanquam harmoniam complectitur.*

Prateus de Reg. Iuris lib. 6.

Ioach. Hopp. de Iuris arte 371. a.

Sim. Shardius Lexic. Iuris Regul.

Matheus Gribaldus in his firſt booke *de ratione ſtudij cap. 7* ſaith, *Regulæ Iuris nihil aliud ſunt quàm breves & compendioſæ ſententiæ ex pervagatis definitionibus perſtrictæ, quò & minori labore diſcantur, & facilius diutiúſque memoria teneantur.*

Matheus Gribaldus l. 1. c. 7. de ratione ſtudij Iuris.

Notes collected out of Authors.

Regula Iuris eſt plurium compendioſa narratio, & quaſi cauſæ coniectio.

Paulus lib. F. de regula Iuris.

Nec abſimile eſt quod Grammatici dicunt, eam eſſe multorum ſimilium collectionem.

In ſumma autem eſt, ac ſi quis, prædictis cum verbis Archid. diſt. 3. c. Reg. coniunctis, ita diceret, quod Regula ſit compendioſa definitio; ſeu cum Quintiliano univerſale, vel perpetuale præceptum diverſarum rerum, quaſi ſub unâ eadémque cauſâ cadentium, univerſitatem complectens.

Ant Maſæ de exercitio Iuriſpr. lib. 1.

Ioach. Hopperus de Iuris arte l. 2. fo. 469. a.

Eſt Regula nihil aliud quàm plurium rerum & ſpecierum in unam quaſi ſummam coniectio.

But binding our ſelues to no preſcript rules of Art, for the better vnderſtanding of the ſame, we may

Definition,

deſcribe a Rule or Ground of Law thus: A Ground, Rule, or Principle, of the Law of *England* is a concluſion either of the Law of Nature, or deriued from ſome generall Cuſtome vſed within the Realme, conteyning in a ſhort Summe, the reaſon and direction of many particular and ſpeciall occurrences.

Diuiſion.

As touching the diuiſion thereof, wee ſhall better obſerue how many Principles and Grounds there be, by the due conſideration of their cauſes from whence they ſpring.

De cauſis. Ariſt. l. 1. Met. c. 4. T. 23.

Non ſolùm ea quæ inſita ſunt cauſæ dicuntur, ſed etiam ea quæ extrinſecus ſumuntur: ut id quod motum affert & efficiens eſt.

Ariſt. l. 2. Dem. c. 11. To. 11.

Cauſarum quatuor ſunt genera.

1 *Vnum eſt forma atque eſſentia rei.*

2 *Alterum eſt in quo ineſt neceſsitudo non abſoluta, ſed ex adiunctione; ſi alia quædam ſint, hæc eſſe neceſſe eſt.*

3 *Tertium genus eſt id in quo ineſt rei efficiendæ vis primaria.*

4 *Quartum eſt finis cuius causâ aliquid fit.*

Ant. Maſæ de exercitio Iurisperitorum l. 1. p. 38. b.

Nam ad interrogationem factam per verba, propter quid ſit aliquid, nihil aliud unquam reſpondetur, quam aliqua ex dictis quatuor cauſis: Inter quas tamen, finis eſt potiſsima, & quaſi aliarum cauſa: Materia enim non eſſet cauſa, niſi haberet formam; & forma itidem niſi ab agente introduceretur; Agens quoque non ageret niſi moueretur à fine; finis autem ipſe immobilis

immobilis permanet : Eſt ergo primum mouens, & prima cauſa, &c.

All cauſes of euery thing are either { Internall or Externall.

Internall are the cauſes { Materiall Formall.

The externall cauſes are the { Efficient Finall.

As touching the Materiall cauſe, matter, or ſubiect wherein theſe grounds are converſant, the ſame are all thoſe things, whereof debate may riſe betweene parties iudicially : which are as well diuine as humane. Inſomuch as *Iuris prudentia*, or the knowledge of the Law, is *Diuinarum humanarúmque rerum ſcientia*. And hence proceedeth it, that all Grounds or Rules of the Law of *England* in reſpect of their matter which they doe concerne, are either ſuch as are not reſtrained to any one proper or peculiar title of the Law, but as occaſion ſerueth, are appliable vnto euery part, title, or tractate of the Law, as by the view and due conſideration of examples following may be made manifeſt; All which, being either concluſions of Naturall reaſon, or drawne and deriued from the ſame, do not onely ſerue as directions and Principles of the Law, but are likewiſe as Poſitions and Axiomes to be obſerued throughout all mans life and conuerſation ; hauing their originall from thoſe Arts that are neceſſary and behoofull for maintenance of humane ſocietie. Materiall cauſe *Bracton lib. 1. cap. 4. § 4.*

And firſt of all concerning the Art of Logicke ; from thence the learned of our Lawes haue receiued many Grounds borrowed out of Logicke.

many Principles, as well out of that part which concerneth the Inuention of Arguments, as of that which teacheth the diſpoſing, framing and the Iudgement of the ſame.

From the firſt part theſe may ſerue for example.

14.H. 831.a.b. *Idem non poteſt eſſe Agens & Patiens.*

28.b.8.10.b. n.37.Dyer. *Omne maius continet in ſe minus.*

Com.213.b. *Magus dignum trahit ad ſe minus dignum.*

Com.323.b. *In præſentia maioris ceſſat minus.*

9.Hen.7.24.a. *Fruſtra fit per plura quod fieri poteſt per pauciora.*

Com.161.a. *Turpis eſt pars quæ cum toto non conuenit.* With many ſuch like,&c.

From the Iudiciall parts of Logicke, theſe and diuers others.

2.Rich.3.7.a. *Qui negat confusè, negat confusè & diſtributivè.*

But how that ſaying may be vnderſtood, and in what ſenſe it may be intended true, and in what not, peruſe the caſe of 4. *Hen.* 7.8.*a.* touching the trauers of a ſuggeſtion of breach of the peace: (where although the ſaid Rule be not mentioned, yet the meaning thereof, by the caſe there debated is partly made manifeſt) Moreouer *Brian* borroweth the Sophiſters verſe, and maketh it a Ground to try whether an iſſue tendered be an expreſſe Negatiue or no, in 11. *Hen.7.23.a.*

Præ contradic. poſt contrar. Præ poſtque Subalter.

This likewiſe is deriued thence, *Negativum nihil implicat.*

Out

Out of naturall Philoſophie theſe with diuers other are deducted, that follow.

Grounds borrowed out of naturall Philoſophie.

VIS vnita fortior. Com. 307. a.
Eſt natura vis maxima. Com. 307. a.
Vltra poſſe non eſt eſſe. Com. 72. b.
Sublata Cauſa tollitur effectus. Com. 268 a.
Vltra ſcire non eſt eſſe with many other of like qualitie. Com. 294. a. 8. Ed. 4. 10. a.

Out of Morall Philoſophie.

Grounds borrowed out of Morrall Philoſophie.

FRom whence, as from a *Fountaine*, all Lawes doe flow, we doe obſerue theſe few following for an example; As

Qui ſentit Commodum, ſentire debet & onus. Com. 244. a.
Volenti non fit Iniuria. 14 Hen. 8. 6. a.
Sic vtere tuo vt alienum non lædas. Com. 501. a.
Fraus & dolus nemini patrocinantur. 13. Hen. 8. 16. a.
Agentes & Conſentientes pari pœna plectuntur. 14. Hen. 8. 10. a.
Summum Ius Summa Iniuria. 14. Hen 8. 8. a. Com 160. b. Com. 370. b.
Vix vlla Lex fieri poteſt quæ omnibus commoda ſit: ſed ſi maiori parti proſpiciat, vtilis eſt.
A vero non declinabit Iuſtus. Com. 48. b.
Quod tibi fieri non vis, alteri ne feceris, with many more ſuch like.

Out of the Ciuill Lawes there are alſo very many Axiomes and Rules.

Grounds borrowed out of the Ciuill Law.

WHich are likewiſe borrowed and vſually frequented in our Law. For ſith all Lawes are deriued from the Law of Nature, and do concurre and agree in the principles of Nature and Reaſon: And ſith the Ciuill Lawes, being the Lawes of the Empire, doe bewray the great wiſdome whereby the Romane eſtate, in the time it moſt flouriſhed, was gouerned: Sith likewiſe the Law of this Land hath alwaies followed beſt and moſt approued Reaſon (which is alſo a type of humane wiſdome) it doth enſue of neceſſitie, that great Conformitie muſt be betweene them. Which Conformitie may be made apparent partly by theſe (amonge ſome thouſand Axiomes and Concluſions of Reaſon) following.

Com. 357. b. 5. Hen 3. 222. *Qui tacet conſentire videtur.*

Vigilantibus & non dormientibus Iura ſubueniunt.

Quod initio non valet, tractu temporis non Conualeſcit.

Com. 168. a. *Quando duo Iura in vno Concurrunt, æquum eſt ac ſi eſſet in duabus.*

Com. 296 b. *In æquali iure, melior eſt Conditio poſſidentis.*

Com. 316. b. *Optima Legum Interpres eſt Conſuetudo.*

Fruſtra Legis auxilium petet, qui in Legem peccat.

Ignorantia facti excuſat. 14 Hen. 8. 27. b.

Com. 251. a. *Modus Legem dat donationi.*

Non

Non eſt regula quin fallat. Com.162.b.

Modus & Conuentio vincunt Legem. 1.Hen.3.33.b.

With others in manner infinite, written and publiſhed in the Latine tongue.

In the *French* alſo many other grounds there are in our Law, to befound agreeable in ſenſe and meaning to ſuch as are frequent and vſuall in the Ciuill Lawes, and there publiſhed in the Latin-tongue, wherof alſo theſe following may ſerue for example.

Nul prendra benefit de ſon tort demeſne. L.verum.§. tempus: fin. pro ſoc. L. ſedes de reſcript.

Nemo ex dolo ſuo proprio relevetur aut auxilium capiet.

Home ne ſera double charge pro vne meſme duetie. L.bona fides ff. de Reg.Iuris.

Bona fides non patitur idem ab eodem bis exigi.

Auxy moult auctthorities & voies que home ad a faire vn fait auxy mult auctorities & voies ad ceſty a qui le fait eſt fait a ceo deſſoluer. 1.Hen.7.16.a.

Nihil eſt magis Rationi conſentaneum quam eodem modo vnum quodque diſſoluere quo conflatum eſt. L.nihil ff: de Regul Iuris.

Le Common welth ſera prefer deuant priuate wealth. 13.Hen.8.16.a. in fine.

Vtilitas Publica priuatorum Commodis ante-ferenda. L: 1.§.fin. *& cap. tol.*

Le ley in cheſeun act ad reſpect al comencement: Com.260.a. Halls caſe.

Origo rerum attendenda.

Imagination de mente de faire tort, ſans de Act fait, neſt puniſhable in noſtre Leg. Com.259.b. Halls Caſe

Affectus non punitur niſi ſequatur effectus. Prateus Lib.3.c.4. Com.160.b. Throgm.Caſe.

Intent direct done plus toſt quam parolls.

Proferentis intentio & voluntas magis quam verborum locutio examinetur. Prateus lib.3.cap.3.

Com. 504. b. 1 *Quant diuers choſes ſont fait a vn meſme inſtant, & lune ne poet prender effect ſans l'auter ; le common ley adiudger ceo depreceder & enſuer, q. apiment : doet preceder & enſuer in feaſant l'intent des parties deprender effect.*

Vbi in Inſtrumento reperitur plures actus ſucceſſive fuiſſe celebratos, ſemper fingitur ille actus præceſſiſſe qui reddit actum validum. Nicholai Euerard Topica Iuris loco 1.

Non attento ordine verborum, talis ordo preſumitur qualis debet eſſe.

With many others to like purpoſe, if place did permit or cauſe did require to obſerue the ſame: Yea many times when as no ground or Rule is expreſſed in our Law, but that we may onely Collect Caſes Concurrent vpon ſome Conformitie of Reaſon: We ſhall finde in the Ciuill Lawes a Propoſition or Rule which ſhall moſt aptly and moſt fitly expreſſe the ſame Reaſon in ſuch ſhortneſſe of ſpeech, as nothing ſhall ſeeme more ſufficient in that reſpect. And vnto the which Propoſitions ſuch as are or may be framed by vs in the French, cannot in excellencie be worthily Compared.

Grounds borrowed out of the Canon Law.

As touching the Canon Law. Foraſmuch as the ſtudies both of the ſame and of the Ciuill Law, are in ſort conioyned by the profeſſors of both what may be ſayd of the one, in this reſpect, may likewiſe be verified of theother: Which aſwell by view of the title *De Regulis Iuris in Sexto Decretalium*, as alſo in diuers other titles of the ſame Law, eſpecially in ſuch as are moſt vſuall for matters of debate in this Realme,

Realme, as are those of excommunication, Marriage, Diuorce, Legacies, Tythes, and such like will at large appeare.

Finally many Grounds and Rules of the Lawes of this Realme are deriued from Common vse, Custome, and Conuersation amonge men, Collected out of the generall Disposition, nature and condition of humane kinde: which Grounds are of two natures. The one obserued out of Humane actions, the other out of vsuall and ordinary speech.

Grounds deriued from vse, Custome, and Conuersation of men.

(Principia externa propriè vocamus ea quæ in Communi hominum vita versantur & ab experientibus & prudentibus animaduertuntur. Ioh. Hopper: de Iuris arte.

Hæc non tam ex ipsa hominis natura quam foris adueniunt, debentq; non ex mente hominis aut animo, sed ex Communibus vitæ moribus longo vsu & tractatione colligi. Ibidem. Hæc sunt igitur illa quæ dico externa Principia, quæ ex communibus vitæ vsibus & moribus diligenter in historia obseruatis decerpuntur, quæq; non tam ordine describi, & Literis mandari, quam longa tractatione colligi, & per manus tradi possunt. Ibidem.

Of the first sort are these and such like following.

Home est tenus de estre procheni a soy mesme. Com. 55. a.

Le inclination de touts homes est de faire ou parler choses pour lour gaine, & auent pour lour pende: Et de ceux q. voilent gabber, de gabber pur aduantage. Par amour. Manxel. 6 a. b.

Com.261.a. Hallstan. 8.Hen.6.19.b. Per.Martin.

Eſt le propeitie de nature de preſeruer luy meſme. Quant home eſt partie, il ne poet eſſe Iudge indifferent a luy meſme.

With many other of like qualitie, which the intendement of the Law deriueth and collecteth out of the vſuall Condition nature, and qualitie of things vpon the probabilitie and likely-hood of occurrences often or for the moſt part hapning and falling out.

Prouerbiall Groundes. *Prouerbium vulgò interpretatur probatum verbum, cum dicatur quaſi Commune omnium verbum, Prouerbia verò citata, inſtar iurium haberi traditum eſt. L. ſolent. F. de officio Procurat. Sim. Shardius Lexicon Iuris.*

Axiomes or *Propoſitions* of the ſecond ſort, are drawne from the phraſe of ſpeech, and deduced from the ordinarie manner of Conference by talke among men moſt vſuall in all places, As are the Common and ordinarie Prouerbs and *Prouerbiall aſſertions*, and ſuch like; the which, as well by reaſon of their ordinarie and often vſe in talke; as alſo for their probabilitie and likelihood of trueth, haue beene ſometime vſed as *Axiomes*, Principles, and Grounds of the Law; and are to be found confirmed with many Caſes, hauing beene vſed as reaſons in the ſame: Whereof theſe few enſuing may ſerue for example.

Com.280.a. *Da tua dum tua ſunt; poſt mortem, tunc tua non ſunt.*

Com.173.a. *Qui ambulat in tenebris, neſcit quò vadit.*

Com.18.b. *Neceſſitas non habet Legem.*

29.Eliz.356.a. *As good neuer the whit as neuer the better.*

14.Hen.8.23.a. *Let him that is cold blow the coale.*

One to beate the buſh and another to take the birds.

With many other ſuch like ſpeeches, which although they are of ſmall moment, being euery where

where ordinary; yet neuertheleſſe for the perſpicuitie and plaineneſſe, they haue heretofore, at ſome times, in Law arguments beene vſed, and fitly applyed in debate of caſes (although not *ad probandum*, yet *ad illuſtrandum*) and ſo likewiſe may at any time hereafter, vpon like occaſion offered, without blame bee frequented.

Although theſe generall Poſitions, Maximes and Rules propoſed, and ſuch like, cannot bee properly reduced (as is aforeſaid) vnder any one peculiar title of the Law extant in any abridgement, table, or directorie; yet neuertheleſſe may they be brought vnder generall titles or common places, to bee framed of purpoſe, As hereafter in place more conuenient ſhall be declared.

And thus much therefore of generall Grounds or Maximes.

Maximes appliable onely to one title.

Now followeth to ſpeake of ſuch as are to bee reduced vnder one particular title, tractate or matter of the Law, ſeruing to no other vſe, but onely doe concerne the ſaid ſpeciall matter, and cannot bee transferred thence, neither may properly ſerue any other then their natiue place, vnto the which they are wholly and alonely to bee referred: As for example.

Vnder Grantes theſe.

Quando aliquis quid concedit, & id etiam concedere videtur, ſine quo res conceſſa eſſe non poteſt. T.E. 1 Fitzh. Grantes. 36. Aſſ. p. 3.

Grant ſera priſe plus fort vers le Grauntour &c.

Vnder

Vnder Contracts theſe and ſuch like.

Ex nudo pacto non oritur actio. Com. 5. a. Com. 302. a. Com. 305. a. Com. 321. a.

17. Ed. 4. 1. a. *Contract ne poit eſtre, ſi ne ſoit que cheſcum partie ſoit agree.*

Vnder Prerogatiue theſe and ſuch others.

Nullum tempus occurrit Regi. Com. 243. a. 261. a. 321. a.

Vide 18. Ed. 3. 2. a. *Le Roy ad auxy un Prerogatiue en le forme de breſs pert per luy, differents de ceaux que common perſon ad, &c.*

Vnder Deeds theſe.

Bracton lib. 2. c. 16 fol 33. b. 14. Hen 8. 22. b. Brudnel. Vide Litt. 183. 21. Hen. 7. 37. b. *Fiunt aliquando Donationes in ſcriptis, ſicut in chartis, ad perpetuam memoriam, propter brevem hominum vitam & ut facilius probari poſſit Donatio.*

Choſes incident que per leur meſme ne poient eſtre grant ſans fait, uncors ils paſſeront ouele principal a qui ſont incident ſans fait. With diuers other in euery title of the Law of like effect.

The diuers kinds of Grounds which doe concern one title.

Theſe ſpeciall Grounds are of diuers ſorts: for ſome concerne the very nature and effence of the title: ſome the conſequents and incidents annexed thereunto. Thoſe which doe concerne the nature of the thing, doe flow from ſome of the cauſes thereof, as the Materiall, the Formall, the Efficient, or the

the Finall. Some from the generall notion; others from the ſpeciall difference; and ſome doe proceede from the effect. Thoſe which doe proceed of the conſequents, concerne either the Incidents inherent and inſeparable, or the adiuncts and ſuch like.

Which Grounds ſo drawne, if they bee orderly diſpoſed with all their ſubdiuiſions, and particular Rules, and the ſame furniſhed with apt caſes, will make a perfect and exact treatiſe of ſuch matter as concerneth that title, reſembling thoſe treatiſes compiled, by *Littleton*, *Parkins*, *Stanford* of the Plees of the Crowne, and others of like forme.

But in this place not intending to combine any ſuch Grounds as doe concerne one title or matter, or thereof to endeauour to draw a type of any perfect treatiſe, it ſhall be ſufficient at this preſent, for example only, to expreſſe that which is here meant, by the diſpoſing of ſome few Grounds of the title of Arbitrement, according to the obſeruation aboue mentioned, that thereby might be conceiued, how ſuch like Grounds concerning one title or matter do flow from the cauſes and conſequents of that title, whereunto they are applied; and that a coherency of them might be both found and orderly framed for the more certaine obteyning of knowledge in obſeruing this, or the like courſe to this hereafter following. Arbitrement.

Firſt although we finde not an Arbitrement to be defined in any report of our Lawes; yet neuertheleſſe *Raſtall* in the ſmall treatiſe of the Termes of the Law, thereof yeeldeth this deſcription.

Arbitrement eſt un award, determination, ou iudgement, quel pluſiors font al requeſt de deux parties Arbitrement *Quid.*

ties al menis, pur, & ſur aſcum dett, treſpas, ou auter controverſie ewe perenter les dits parties. But more artificially it may be deſcribed out of the Ciuill Law thus:

Arbitrium eſt Arbitri ſententia ſive Iudicium inter controvertentes; privato conſenſu, non autem publica interveniente authoritate, datum.

Out of the bookes of Reports of the Lawes of this Land this full deſcription may be drawne.

An Award is a iudgement 8.*Edw.*4.1.8.*Edw.*4.10.*a.*21.*Edw.*4.39.*a.* giuen by ſuch perſon or perſons as are elected by the parties vnto the controuerſie, 9.*Edw.*4.43.*b.Fairfax.* 16.*Edw.*4.9.*a.* for the ending and pacifying the ſaid controuerſie. 8.*Edw.*4.10.*a.* 19.*Hen.* 6. 37.*b.Askewe.* according to the comprimiſe and ſubmiſſion. 19.*Edw.* 4.1.*a.* and agreeable to reaſon and good conſcience. 19.*Hen.*6.37.*a.*

The Etymologie.

Touching the Etymologie or notation of the names thereof, it ſeemeth to bee called an Arbitrement, becauſe the Iudges elected therein, may determine the controuerſie, not according to the Law, but *Ex boni viri Arbitrio.* Or elſe perhaps becauſe the parties to the controuerſie haue ſubmitted themſelues to the Iudgement of the Arbitrators, not by compulſary meanes, and coertion of the Law, but *Ex libero Arbitrio ſuo*, of his owne accord. It is called an Award of the French word *Agarder*, which ſignifies to decide or iudge. It is in the Saxon or old Engliſh ſometime called a *Loueday*, for the quiet and tranquillitie that ſhould enſue thereof, and for the ending of the cauſe which is wrought thereby.

1 2 3 4

The

The Materiall cauſe whereabout it is conuerſant, is the controuerſie, which The Materiall cauſe.

1 Firſt may be either action, ſuite, quarrell, or demand; and the

2 Second that, concerning dutie or demand, either perſonall, reall or mixt, or euery of them.

The Formall cauſe is, the forme and manner of the Award, or the yeelding vp of their iudgement, according to reaſon, intent and good meaning. The formall cauſe.

The Immediate efficient cauſe, is the Arbitrator or Arbitrators. The efficient cauſe.

The Mediate efficient cauſe, is the comprimiſe or ſubmiſſion, and the parties at variance, being alſo parties to the ſubmiſſion. Wherefore for the more breuitie we will diſcourſe of euery of theſe laſt recited, when we ſhall diſcouer the power of the Arbitrator.

The finall cauſe, is both to appeaſe The finall cauſe.

1 Firſt the debate and variance ſo riſen betweene the parties, and compremitted; and alſo to reduce

2 Secondly that which was before vncertaine, vnto a certaintie.

So that by theſe you ſee, that thoſe fiue things which are found to bee incident to euery Award, *viz.*

1 Firſt matter *de* controuerſie.

2 Submiſſion.

3 Parties *al* ſubmiſſion.

4 Arbitrators and

5 Render *ſur del* Iudgment, ſpoken of in 4. *Eliz. Dyer* 217. *a.* are here reduced into a methodicall conſideration of the cauſes of euery Award, ſeeing indeed,

deed, they and no other are the very cauſes of the ſame.

Genus. The *Genus* or generall notion of the former deſcription, is, that it is a Iudgement.

Differentia. The ſpeciall difference whereby it is diſtinguiſhed from other Iudgements, and expreſſed in the ſaid deſcription, is, that it is giuen by Iudges elected by the parties, and not by coertion of the Law.

The effect. The effect is, when it concerneth any payment of money, to alter, change and make the controuerſie *tranſire in rem iudicatam*, and thereupon to giue action for the ſumme awarded.

2 If it doe determine any collaterall or other matter then payment of money to bee made or done, then is it not compulſary to conſtraine the parties to performe it; but euery of them is reſtored to his former action. Except the comprimiſe or ſubmiſſion be by deed; and ſo therein it reſteth wholy vpon that ſecurity by bond, couenant, ſtatute, or recognizance, by the which the parties comprimitted themſelues.

The Adiunct. The Adiunct, is the performance thereof and the manner how, which whether the Award be performed or not, it maketh nothing to the nature and ſubſtance of the Award it ſelfe. But neuertheleſſe ſuch performance of the Award is a requiſite conſequent annexed to the conſideration of the nature of an Award.

Theſe the generall cauſes of an Award thus conſidered; next followeth the conſideration of the Groundes that flow from euery of them.

Materiall cauſe. From the Materiall Cauſe which is the Controuerſie, theſe Groundes or Rules are deduced.

In

In Reall matters *quo Concerne franke tenement, Arbitrement ne lia, le title, ne done ceo. 14. Hen. 4. 19 a.* Reall Matters

In matters of Realtie which Concerne freehold, an Arbitrement doth neither giue title nor bind the right.

In Reall Actions, vn Arbitrement nest plee. Reall Actions

In Mixt Actions, Arbitrement nest plee; Si non q̄ le Comprimise soit per fait. 19. Hen. 6. 37. 6. Newton. Mixt Actions.

In Personall Actions sur Personall torts, Arbitrement est Plee, coment que le submission ne soit per fait. 14. Hen. 4. 24. b. Rauish gard. Personall Actions.

In Controuersie concernant le propertie de Reall Chattells, vn Arbitrement transfer propertie de ceo accordant al agard 21. Hen. 7. 29. b. Reall Chattells

In Chattells Personali, Arbitrement transfer propertie. Personall Chattells.

In Personall dutie grounde sur specialtie, Arbitrement nest auaileable. 3. Hen. 4, 1. b. 8 Hen, 5. 3. b. Personall dutie.

In Controuersie ground Sr matter de Record, Arbitrement ne sera regard. 6. Hen. 4. 6. a. 8. Hen. 5. 3. b. 4. Hen. 6. 17. b. Matters de Record.

Arbitrement doet este de Dutie inent certaine. 6. Hen. 4. 6. a. 2. Hen. 5. Fitzh. 23. 4. Hen. 6. 17. b. 10. Hen. 7. 4. a. Dutie in certaine.

Controuersy de dett solement. ne poet este misi on Arbitrement. 45. Ed. 3, 16. a. 2. Hen. 5. Fitzh. Arbitrement. 23. 8. Hen. 5. 3. b. 4. Hen. 6. 17. b. 10. Hen. 7. 4. a. Dett.

In Contract de det oue auter chose mise en Conprimise Arbitrement sera bone. 2. Hen. 6. Fitzh. Arbitrement 23. 4. Hen. 6. 17. b. 10. Hen. 7. 4. a. Debt.

Dett. *Dett ſur Contract ſans ſpecialtie, per le reſolution de aſcuns liuers poet eſter miſe en Arbitrement.* 45. *Ed.* 3.16.*a.*6.*Hen.*4.6.*a.* 4.*Hen.*6.18.*a.*

Theſe with diuers other grounds, doe proceede, as we haue ſaid, from the Materiall Cauſe or Controuerſie.

Formall Cauſe. There reſteth now to ſpeake of ſuch as doe proceede from the Formall Cauſe.

Euery Award, as touching the forme thereof, ought to haue theſe foure qualities.

1. Firſt that it be not of a thing impoſſible to be performed by the parties.

2. Secondly, that it doe not ordaine matter vnlawfull to be done.

3. Thirdly, that the ſame Award agree with Reaſon and with good meaning.

4. Fourthly, that it be ſenſible, full, and perfect in vnderſtanding.

As touching the firſt.

Impoſſible.

1. *Arbitrement ne doiet eſte de choſe ou matter impoßible.* 8. *Edw:* 4.1.*b. Moyle.* 8. *Edw.*4. 10.*a.*

Encounter Ley. *Yeluerton.* 19.*Edw.*4.1.*a.Neele.*9.*Hen.*7.16.*b.Keble.*

2. *Arbitrement ne doiet eſte de choſe encounter ley.* 19 *Edw.*4.1 *a. Neele.*21. *Edw.*4.*b.Bridg.* 9.*Hen.*7. 16.*a.b.Keble.*

3. *Arbitrement ne doiet eſte reaſonable.*46.*Edw.* 3.16.*a.* 43. *Edw.*3.17.*b.* 2.*Hen.*5.2.*a.* 17. *Edw.*4. 5.*b.*9. *Hen.*7.10.*b.Keble.*4. 6.*Edw.*3.17.*b.*21.*Edw.*

4.

4.40.*a.* 10.*Hen.*4.*Fitzh. Arbitrement.*

This Ground laſt remembred, being generall, containeth therein many ſpeciall Rules vnder it; whereof ſome doe follow.

Arbitrement doiet eſte tiel q̄ les parties poient per- Satisfaction.
*former ſans le aſſiſtance de aſcunes auters quenx ils ne poient compel a ceo faire & performer.*8. *Edw.*4.2. *a. Illingworth.* 17. *Edw.*4.15. *b.* 18. *Edw.* 4. 23. *a. Cateſby.* 19.*Edw.*4.1.*b.Brian.*

Mes ſi les parties ont meanper le ley a Compel- Aſſiſtance des auters.
*ler tiels eſtrangers a ceo performer, le Agard eſt aſſetts bone.*17.*Edw.*4.5.*b.*

Arbitrement q̄le partie faire vn Iudiciall Act eſt Iudiciall Act.
*bone, coment q̄il ne poiet ceo performe ſans aſſiſtance del Court.*19.*Hen.*6.38.*a. Paſt. Nonſute.* 19. *Edw.*4. 1.*b.Brian.fine.*12.*Edw.*4.8.*a.Retraxit.*21.*Edw.*4.38 *a.Retraxit.* 5.*Hen.*7.22.*a.b.Diſcon &c.*

Chaſcune Arbitrement q̄ ne import ſatisfaction del Satisfaction.
*tort q̄ eſt miſe in comprimiſe, neſt bone.*43.*Edw.*3.28. *b.finchd.*46.*Edw.*3.17.*b.* 2.*Hen.*5.2.*a.*45. *Edw.*3.16. *a.* 19.*Hen.*6.38.*a. Paſt*: 22. *Hen.*6.39.*a. Port.* 30. *Hen.*6. *Fitzherbert Arbitrement.* 27. 9.*Edw.*4 44. *a.Choke.*9.*Hen.*7.16.*b.* 12.*Hen.*7.15.*a.*

This Ground is alſo Generall: Wherefore it ſhall be expedient to diuide it by the particular Circumſtances of caſes vnto more eſpeciall propoſitions, together with their ſeuerall Exceptions to be ſet downe in manner following.

Arbiterment in tiel maner, q̄ pur ceo q̄ vn des Redeliuerie des biens.
*parties ad les Chatells del auter, q̄ il eux redeliuera, ceo neſt ſatisfaction.*45. *Edw.*3.16.*a. Kirton.* 2.*Hen.* 5.2.*a.*12.*Hen.*7.15.*a.*

Mes

Redeliuerie des biens.

Mes ſi ſur le deliuery des biens, ceſty a q̃ ſerront deliuer poet auer aſcun benefit, per tiel deliuery in ſatisfaction del tort, donq̃ eſt le Arbitrement bone. 2. Hen. 5. 2 a. 14. Hen. 4. 14. b. 12. Hen. 7. 15. a.

Parte del Choſe.

Arbitrement q̃ vn partie auera vn parte del choſe comprimiſe, & Sr q̃ le controuerſie fat, & l'auter partie l'auter parte eſt voide. 45. Edw. 3. 16. a. 10. Hen. 4. fitzh. Arbiterment. 19.

Part del Choſe

Arbitrement q̃ le partie patera part de ſa dett, eſt voide. 45. Edw 3. 16. a.

Plus q̃ il doit.

Arbitrement ſur matter de dett, ſils agard q̃ le parties endebted payera plus q̃ il doit in recompence del dit dett ceo eſt void. 9. Hen 7. 16. b. Keble.

Gager de Ley.

Arbitrement q̃ ceſty q̃ eſt Suppoſe dauer fait treſpas, faira de ceo ſon Ley, et ſur ceo ſera diſcharge, neſt ſatisfaction al auter, et pur ceo neſt bone. 46. Ed. 3. 17. b.

Entermariage.

Arbitrement q̃ in Satisfaction del tort q̃ les parties entermarient, ceo neſt bone agard; car neſt ſatisfaction 9. Edw. 4. 44. a. Chock.

Accomptera

Arbitrement q̃ vn des parties q̃ eſt in arrerages in accompt accomptera al auter, ceo neſt ſatisfaction. 30 Hen. 6 Fitzh. Arbitrement. 27.

Iour paſſe.

Arbitrement q̃ les parties fera act a tiel iour, & deuant q̃ le agard eſt perfect, le iour eſt paſſe til agard neſt bone. 8. Edw. 4. 11 a. 8. Edw. 4. 22. a.

Non in Rerum Natura.

Arbitrement q̃ refer le feaſance del choſe ou auter matter a tiel choſe q̃ neſt in Rerum natura; tiel Arbitrement eſt voide. 21. Edw. 4. 40. a. 9. Edw. 4. 44. a. 39. Hen. 6. 10. a.

Haueing thus ſhewed the Circumſtances of certaine Arbitrements, which haue beene taken to be againſt

againſt reaſon, ſounding to no ſatisfaction, and therefore voyde: Now reſteth to be ſhewed certaine Circumſtances, in Arbitrements agreeable vnto Reaſon, and imparting ſatisfaction, and therfore deemed good. Reaſonable.

Arbitrement doet eſte equall in reſpect d'Ambideux parties, & lune come lauter ſera lie a ceo. 7. Hen. 6. 41. a. Strange. 19. Hen. 6. 38. a. Newton. 20. Hen. 6. 19. a. Newton. 39. Hen. 6. 12. a. Moyle. Equall.

Lou diuers dune parties, & dauter eux ſubmit al agard, & le Arbitrement eſt, q. lune de lune partie paiera a vn auter de lauter partie tant, Sans rien parler des auters; ceo eſt bone agard, pur ceo que poet eſte que le auters naueront cauſe dauer aſcun choſe. 22. Edw. 4. 25. b. Enter aſcunes Parties.

Arbitrement pur ceo q. les torts fait per les parties cheſcun a lauter ſont equal ſeront quit Cheſcun vers Lauter; ceo eſt bone agard. 19. Hen. 7. 37. b. Newton. 20. Hen. 6. 19. a. Newton. 21. Hen. 6. Fitz. Arbit. 9. Quitt.

Arbitrement q. vne des parties ſera quit vers lauter, et q. ceſty auter paiera ou faira tant pur ceo q. ſon treſpas fut le greinder, eſt bone agard. 10. Hen. 6. 4. a. 20. Hen. 6. 19. a. Newton. Quitt.

Arbitrement q. lune done al auter quart de rine, ou tiel petit recompence pur ſatisfaction del tort, eſt bone agard. 43. Edw. 3. 33. a. 45. Edw. 3. 16. b. Belknap. 9. Edw. 4. 44. a. Nedham. Petit. Recompence.

Si le Arbitrement ſoit, que vn des parties paiera grenider ſum in value q. le tort eſt que il ad fait, vncore le agard eſt bone, & ceo giſt in diſcretion des Arbitrators. 8. Edw. 4. 21. Chock. Grenider value q. le tort.

Arbitrement, que cheſcun releaſe a lauter, eſt bone Releaſe.

bone. 9. Edw. 4. 44. b. Danby.

Releaſe. *Arbitrement que lune releaſe tout ſon droit in tiel terre eſt bone ſatisfaction. Si ceſty a q̄ le releaſe ſera fait ſoit in poſſeſſion del terre &c. Et ceo appiert per le agard. 9. Edw. 4. 44. b. 21. Edw. 4 40. b.*

Donet ceo que il nad. *Arbitrement que lune partie done al auter tel choſe, coment que le partie nad tel choſe vncore eſt le agard bone, et il doit prouide ceo. 19. Edw. 4. 1. a. Neele. 9. H. n. 7. 16. a.*

Bone parte *Arbitrement bone in parte, et voide in parte. 19. Edw. 4. 1. a.*

Security del Agard. *Arbitratours poient ordaine act deſte fait in lour agard pur le meliour ſecuritie del performance de ceo, come obligation. 8. Hen. 6. 18. b. Newton. 19. Hen. 4. 1. a. Chock.*

Certaine. *Cheſcune Arbitrement doet eſte plaine, et certaine in ſence. 8. Edw. 4. 11. a. Pigot.*

Entier. *Arbitrement eſt choſe entier. 18. Edw. 4. 23. a. Brian.*

Thus much touching the Matter and forme of Arbitrements and the Axiomes, Grounds and Rules deduced from the ſame: Wherein we haue not expreſſed euery Rule that might be found in the bookes or collected thence, tending hereunto. Neither are theſe Axiomes or Propoſitions here put downe, furniſhed with all thoſe caſes, that mighe be thereunto applied. For, not intending to expreſſe the type of any treatiſe of this title, but onely a Methodicall Abſtract or Directorie, that which is heere exemplified in part may be ſufficient to expreſſe our meaning before declared. But to proceed.

Efficient Cauſe. The Efficient Cauſes, and the Rules drawne from the ſame doe come next to conſideration.

The

The first whereof is the Arbitratour. Of whom the Author of the Institutions of the Canon Law giueth this description. *Arbitri dicuntur proprie, qui (nullam potestatem habentes ex lege) consensu Litigantium in Iudices eliguntur: in quos compromittitur, vt eorum sententiæ stetur.* *Iohannes Paulus Lancelottus. Arbitrator Quid.*

Out of the bookes of the Common Law, a description of an Arbitratour may be thus Collected. *Vne Arbitratour est Iudge priuate, eslew per les parties. 9. Edw. 4. 43. b. Fairefax. 16. Edw. 4. 9. a. Feneux. 19 Hen. 6. 37. b. Askew. pur appeaser les debates enter eux. 8. Edw. 4. 10. a Billinge. Et de arbitrate et adiudge selonq; lour bone intent. 19. Hen. 6. 37. a. Paston.*

Sithence in the Award it selfe, the Law requireth such qualities, there hath not bin made many nor scarce any question, who may be an Arbitratour and who not: Neither (considering what hath beene said touching the forme of an Award) should it be greatly necessarie. Therefore we will proceede respecting in the Arbitratour these three things.

1. First his Ordinance, from whom it is.
2. His Authoritie, what it is.
3. His Dutie wherein it Consisteth.

Touching his Ordinance, he is ordained by these two things: Ordinance.

1. First by the Election of the parties. 20. *Hen. 6, 41, a.*
2. By his own vndertaking of the Charge. 8. *Edw. 4, 10, a.* Billinge.

Touching his Authoritie, what it is. Authoritie

1. Firſt it is deriued from the Submiſſion; and extendeth no further.

2. Thereby he is a Iudge betweene the parties.

3. And therefore he cannot transfer his authoritie ouer to any other.

Duety. Touching his Duty, it conſiſteth in theſe three.

1. Firſt to heare the griefe of the partie.

2. To iudge according to equitie.

3. To notifie their Award.

Election of the Arbitratour. Firſt therefore concerning the election of the Arbitratours by the parties to the Controuerſie (which ought likewiſe to be parties to the Submiſſion) there is firſt of all to be conſidered, what perſons may by the Law ſubmitte themſelues to an Award made by others, and what perſons cannot.

Queux perſons poient eux ſubmitter al agarde.

And therefore,

Deputy. *Si vne des parties ſubmitt luy a vne Arbitrement dune parte, et Depute del auter parte in noſme del dit auter party: Arbitrement Sur ceo fait per enter eux, ſemble bon. 4. Eliz. 217. a. 60.*

Baron & feme. *Le Baron poet luy meſme ſubmit al agard pur luy et ſa feme pur chattells des queux il ad le diſpoſicon in droit, et per reaſon de ſa fem, et ceo Liera la feme. 21. Hen. 7. 29. b.*

Enfant. *Si enfant ſubmit luy al vne agard, il ſera lye de ceo perfformer cy bien come home de plein age. 13. Hen. 4. 12, a. 10. Hen. 6. 14. a.*

Aſcuns des parties. *Si diuers dune parte ont fait tort a vn auter, & ceſti a qui le tort eſt fait, et vn de les auters ſubmit eux al agard, de ceſt agard fait les auters nient parties al ſubmiſſion aueron aduantage in extinguiſhment del tort. 7. Hen. 4. 31. b. 20. Hen. 6. 12. a. 20. Hen. 6. 41. a.*

Si

Si divers del une parte ſubmitt eux meſmes al agard de certaine perſons, & divers del auter parte: Les Arbitratours ont power de faire agarde pur matters enter eux ioyntment, & iſsint pur matter enter eux ſeueralment. 2. *Rich.* 3. 18. *b. vide* 21. *Hen.* 7. 29. *b. Com. Dalton.* 289. *b.* *Ioynt et ſeuerall.*

Si divers delune parte & de auter ſubmit eux al agard del une, que fait agard perenter aſcunes dune party, & aſcunes del auter party et nemy perenter eux touts, & ne parle rien en ſon agard des auters, uncore tel agard eſt bone. 22. *Edw.* 4. 25. *b.* *Aſcunes des parties.*

Thus much touching the parties that doe ſubmit themſelues vnto an Award, and which make an election of the Arbitratours. Now followeth that ſomewhat be alſo ſaid as touching the vndertaking of the charge of the ſaid award. Vndertaking the Award.

Si le Arbitratour proteſt, que il ne voile meddle ave tout ceo que eſt commit a luy ou conteyne en le ſubmiſsion ou ſil fait agard tantum del percel, le agard eſt bone 19. *Hen.* 6. 6. *b.* 39. *Hen* 6. 11. *b. Priſot, cont.* 4. *Eliz.* 217, 60. 7. 1. *Eliz.* 243. *b.* 52. *Del parcell.*

Mes ſi le ſubmiſsion ſoit per fait condicionalment que le dit gard ſoit deliver deuant tiel iour: une Arbitrement de percel neſt bone 4 *Eliz.* 217. 60. 7. 8. *Eliz.* 243. *b.* 52. *Parcell.*

Mes uncore, ſi le ſubmiſsion ſoit que ils eſtoieront al agard des Arbitratours de tout le choſe comprimit ou fait pur aſcun percel de ceo: donque le Arbitrement eſt bone pur parcel. 39. *Hen.* 6. 11. *b.* *Parcell.*

And thus much hath beene ſaid of the taking vpon them of the charge of the Arbitrement.

Now reſteth it likewiſe to ſpeake of the Authori-

ty of the Arbitrators themselues: which is, as before is declared, grounded vpon the submission.

The submission or comprimise therefore out of the Ciuill Law, is thus defined.

Compromise or submission.

Compromissum est simultanea illa partium promissio, qua sua sponte, ad alicuius boni viri Arbitrium suam remittunt controversiam.

Submissions are in two manners, either by writing or by word.

These that are by writing, are either by obligation, or by couenant.

Which obligation is eyther of Record, as a Recognizance, or by deed betweene the parties.

And this Submission by writing, or by word is eyther absolute, or conditionall, so that the Award be deliuered by a certaine day, or such like.

Wherefore inasmuch as the authority of the Arbitratour is deduced from the submission, it followeth that,

Nient containe in submission.

Le Arbitrement que est fait de chose inent containe in le submission, est voide, 7, Hen. 6, 40, b. 19, Hen. 6, 38, b. Forsc. 9, Ed. 4, 44, a. Chock. 19, Ed. 4, 1, a. Neele. 7, 8, Eliz. 242, b, 52.

Nient containe in le submission.

Mes si le submission est de chose personales Arbitrators poient agard, que vn des parties fera act que est de chose real in satisfaction del personal tort. 9, Ed. 4, 44, a, Brian.

Real.

Si le submission soit de chose real, les arbitratours poient agard satisfaction deste fait de chose personal, 9, Ed. 4, 44, a, Brial.

Estrangler.

Si les arbitratours agard, que vn des parties fera act al estranger, come feofment, ou tiels sembles, tel arbitrement

Arbitrement eſt void, 22, *Hen.* 6, 46, *b.* 17, *Ed.* 4, 23, *a*, *Catesby.* 19, *Ed* 4, 1, *b*, *Brian.* 5, *Hen.* 7, 22, *b.*

Si le ſubmiſſion ſoit dune choſe, le Arbitrement poit eſſe fait de choſe incident a ceo. 8, *Hen.* 6, 18, *b.* 19, *Ed.* 4, 1, *a*, *Chock. ver.* 9, *Hen.* 7, 15, *b*, 16, *a.* Incident.

Vpon this authority giuen to the Arbitrators by the ſubmiſſion, to deale in manner as aforeſaid, in things touching the ſame ſubmiſſion.

It enſueth alſo ſecundarily, that

Le Arbitrator eſt un Iudge perenter les parties, 19, *Hen.* 6, 37, *b*, *Aſcough.* 9, *Ed.* 4, 43, *b*, *Fairf.* 16, *Ed.* 4, 9, *a*, *Ieney. Com. Fozoſta.* 6. *a.* Iudge.

Wherefore likewiſe it enſueth that the Arbitrator being a Iudge cannot transferre that his Iudiciall authority to any other.

And therefore,

Si le Arbitrement ſoit, que les parties eſtoiera al Arbitrement dun eſtranger; cco neſt bone agard, 47, *Ed.* 3, 21, *a*, *Cont.* 8, *Ed*, 4, 10, 11, *a.* Eſtranger.

Mes ſi l'eſtranger ad fait un Arbitrement deuent perenter les dits parties, le Agard pur eſtoier a tiel Arbitrement del eſtranger eſt bone, 39, *Hen.* 6, 10, *a*, 11, *a.* Eſtranger.

Mes ſi le Arbitrement ſoit que les parties performera le Agard dune auter deuant fait perenter meſmes les parties, lou in verity neſt aſcun tel agard: uncore ceſt Arbitrement eſt bone prima facie tanque ſoit noſtre que neſt tiel agard, 39, *Hen.* 6, 12, *a*, *Priſot.* Eſtranger.

Mes uncore ſi le Arbitrement ſoit, que une act limit per le Agard ſera fait per le aduiſe & counſeil d'une auter perſon; tiel Agard eſt bone, 8, *Ed.* 4, 11, *a.* 14, *Ed.* 4, 1, *a*, *Chock.* Aduice.

Mes

Aduice. *Mes ſi le Agard ſoit, que le act ſera fait per le Aduiſe del Arbitratour meſme apres le Agard rendu ſur tel Agard neſt bone,* 19, *Ed.*4,1,*a*, *Chock.*

Vmpier. *Si les parties eux ſubmit al Agard de certaine perſons, & ſil ne poient agree, donque al ordinance dun auter come umpier ſi les Arbitratours font agard de parcel, umpier ne fera agard del auter parcel remnant,* 39, *Hen.*6, 10, *a*, *b.*

Vmpier. *Mes ſi le ſubmiſſion ſoit tiel que le umpier fera Agard del tout ou parte, donque il poit faire Agard de ceſt parte, oueſque que les Arbitratours nauont meddle,* 39, *Hen.*6. 11. *b. Priſot.*

Now as touching the duty of the Abitratours. Firſt

Duty. *Les duties des parties eſt a vener devant les Arbitratours & mre lour grieues.*

1 *Et le Arbitratour doit eux oir.*

2 *Et ſolonque ceo adiudge, ou auterment il neſt bone Iudge,* 8, *Ed.*4, 10, *a*, *Billinge.*

Thoſe which affect the Method of *Ramus* (that is to begin with the efficient cauſe, as here, with Arbitratour) rather then that which is vſually proſecuted by the Interpretors of *Ariſtotle* (namely to begin firſt with the matter and forme, which wee hitherunto haue endeauoured to follow) may heere adde to, the ſecond part of the duty of an Arbitratour (that is, to that which hath beene here ſaid of this Iudiciall Authority and Iudgement) as much as hath beene before, firſt of all, ſhewed by vs, touching the Materiall and Formall cauſes and the Groundes and Rules incident thereupon.

But neuertheleſſe, to proceed with our intended enterpiſe

enterprise, touching the third part of the duty of an Arbitrator, *viz.* the publishing or notifying of his Award, It is to be considered that the publishing or notifying of an Award is either prouided for and ordained by the submission it selfe; or else it is left and permitted to the discretion of the Arbitratour.

If it be prouided for, by the submission; for the most part it is in this manner, that either the same Award made be notified to the parties, or some of them; and that, either by a certaine day or time, or else without limitation of any time.

As concerning therefore the deliuery of the Award, their is to be noted; that where such prouision is made of notification by the submission, that then;

Arbitrement nest Arbitrement deuant que il soit pronounce. 8. *Edw.* 4. 21. *b. Chock.* — *Pronounce.*

Lou per le submißion est ordaine ou prouide con-dicionalment, que le agard soit deliuer, ceo nest a sun Arbitrement in ley deuant que il soit deliuer in fait. 8 *Edw.* 4. 11. *Yeluerton.* 8. *Edw.* 4. 21. *a. Chock. vide.* 1. *Hen.* 7. 5. *a.* 37. *Hen.* 8. *Browne, Conditions* 46. — *Deliuery de Agard*

Mes si le submißion soit q̄ le agard sera deliuere al parties &c. deuant vn iour hoc petentibus, mes nul certaine iour limit quand doibt este deliuer les parties doient prender notice del agard a lour peril. 8. *Edw.* 4. 1. 8. 21. *&c.* — *Deliuery.*

Si diuers d'un party & diuers de auter party submit eux al Arbitrement de vn auter, prouise, q̄ il soit deliuer al parties, ou a vn de eux: ne besoign al Arbitratour a deliuer ceo a ambideux del vn party ou a vn de chacuns partie: mes suffist si soit deliuer — *Deliuery.*

al aſcun des dits parties 4.5.Eliz.218.b.5.

Deliuery. *Si le ſubmiſſion ſoit que le Arbitrement ſera deliuer Deuant tiel iour, il poet cy bien eſte deliuer per parol come per fait : ſi non q̄ le ſubmiſſion ſoit q̄ il ſera per fait.4.5.Eliz.218 b.5.*

County et lieu del deliuery. *Si le ſubmiſſion ſoit q̄ le Arbitremnt ſera deliuer ceo poet eſte fait in vn County, & deliuer in auter County.5.Hen.7.7.a.*

Temps. *Si le ſubmiſſion ſoit per fait, & le temps pas in q̄ le Arbitrement doet eſte fait, les parties ne poient proroge le temps ouſter pur faire le agard ſans nouel ſvbmiſſion a tel entent.49 Edw.3.9.a.*

Temps. *Mes ſi le ſubmiſſion ſoit ſans fait, les parties poient proroge le temps q̄ fut done pur faire le agard.49 Ed. 3.9.Fitzh.agard.22.*

Temps. *Si les Arbitratours font lour agard per enter les parties vn iour, ils ne poient faire auter agard per enter les parties vn auter iour, coment q̄ le temps dom per le ſubmiſſion ne ſoit expire.22. Hen.6.52. a. vide.33.Hen.6.28 b.*

Temps. *Arbitrement ne Poet eſte fait parte a vn temps, et parte al auter, coment q̄ ſoit deins le temps del ſubmiſſion.39.Hen.6.12.a.Danby.8.Edw.4.10.b.Fairfax 19.Edw.4.1.a.Chacke vide.3.Hen.4.1.b.*

Temps. *Mes les Arbitratours poient Common enter eux meſmes, & agree ſur vn choſe vn iour, & de ante choſe auter iour, & in le fine faire vne entire agard de tout : Et ceo eſt bone.47.Edw.3.21.a.39.Hen.6.12. a.Danby.*

Temps. *Si Arbitratours agard vn choſe de vne parte, & deuant q̄ ils poient agree de lour agard del remnant, le temps dome per le ſubmiſſion expire ; tont lour agard*

eſt

eſt voide. 39. *Hen.* 6. 12. *a Priſot.*

But if there be by the ſubmiſſion no order taken for the Deliuery or Publication of the Award; Then

In honeſty & Conſcience le Arbitratour eſt tenus de faire notice al parties de ceo. vide. 8. *Edw.* 4. 10. *a. Billinge. vide.* 8. *Edw.* 4. 2. *a. b. Markham.* Notice.

Mes in rigore Iuris l'arbitrement meſme eſt intend choſe Notorious. 8. *Edw.* 4. 1. *b. Chock.* 8. *Edw.* 4. 21. *b. Chock.* Notice.

Et per ceo.

Parties al Arbitrement ſont tenus de prender notice del agard a lour peril. 8 *Edw.* 4. 1. 8. 21. 18. *Edw.* 4. 18. *a.* 1. *Hen.* 7. 5. *a.* Notice.

Coment que les Parties ne ſont dauer Notice done a eux de L'arbitrement, vncore ſi les Arbitratonrs agard q̄ un des parties fera act̄ q̄ depend ſur auter primes deſte faite del auter partie, de ceo il auer notice 8. *Edw.* 4. 21. *b.* 20 *Edw.* 4. 8. *b. Sulliard.* Notice.

Hitherto hath beene ſaid of ſuch matters where the Arbitratours haue executed their Authoritie without controull of the parties: But if, before any Award made, their Authoritie ſhall be Lawfully Countermanded. Then doth there remaine in this place to be conſidered.

1. Whether ſuch Countermaunds be permitted by the Law.

2. And in what Caſes not.

3. And alſo in what manner the ſame is to be done.

Wherefore

Si le ſubmiſſion ſoit ſans fait, cheſcun des partes poit Countermaund.

poit countermand & diſcharge les Arbitratours. 49. Edw. 3. vide Fitzherbert Arbitrement 21. 21. Hen. 6. 30. a. 28. Hen. 6. 6. b. 5. Edw. 4. 3. b. 8. Edw. 4. 10. b.

Countermaund. *Mes donq les parties doient doner Notice al Arbitratours del dit diſcharge. 8. Edw. 4. 10. b. Markham. 8. Edw. 4. 12. a. Lakyn.*

Countermaund. *Mes ſi diuers d' vn part & diuerſe d'auter partie eux ſubmit al Arbitrement ſans fait, vn del vne parte ne poet diſcharge le Arbitratour ſans les auters ſon Compagnons de meſme le partie. 28 Hen. 6. b.*

Countermaund. *Mes ſi le ſubmiſſion ſoit per fait vn des parties ne poit Countremaund les Arbitratours. 49 Edw. 3. Fitzh. Arbitrement 22. nient in le liuer a large. 5. Edw. 4. 3. b. 8. Edw. 4. 11. b. Pigott.*

Regula a cauſa finali. The laſt cauſe of the fower before remembred being the Finall Cauſe (that is) the end and ſcope wherefore men do ſubmitte themſelues vnto the Arbitrement and Award of any perſon, conſiſteth vpon two things.

Final determination. 1. *Chacun Arbitrement eſt a faire final determination & de appeaſer le ſtrifes, debates & variances enter les parties. 19. Hen. 6. 37. b. Newton. 8. Edw. 4. 10. a. Lakyn. 8. Edw. 4. 12. b. Yelverton.*

A reducer incertaine al certainetie. 2. *Chacune Arbitrement eſt a reducer choſe incertaine a vne certainetie & nemy a reducer vn certainty in auter certainetie 6. Hen. 4. 6 a. Hankford. 4. Hen. 6. 17. b. Weſton. 10. Hen. 7. 4. a.*

Thus much hath beene ſaid as touching the Cauſes.

Now as concerning the Genus or Generall Notion in the former definition of an Arbitrement, It is

is to be conſidered, That

Cheſcun Arbitrement eſt vn Iudgement. 8. *Edw.* 4. 1. *b. Fairefax.* 8 *Edw.* 4. 10. *a. Ieney.* 21. *Edw.* 4 39. *a. Vauaſour.* Iudgement.

Becauſe the ſpeciall difference vſed in the ſaid former definition of an Award, was this, That it was giuen by Iudges elected by the parties and not by Compulſury Iuriſdiction of the Court, thereof enſeweth, that

Il eſt diuerſitie lou home eſt Iudge per authorite del ley, & per Election del partie meſme: Car Iudge de Record ne doner Iudgement vers les parties, ſinon q. ils ſont appells deuant eux per proces del ley: Mes autrement eſt dun Arbitratour q. eſt Iudge per enter les parties. 8. *Ed.* 4. 2. *a. Illingſworth.* Intent del Arbitrator.

Of this alſo enſueth, that whereas euery Iudgement of Record ſhall be executed literally, according to the warrant iſſuing out of the Record, vpon and for the executing of the ſaid Iudgement; Yet neuertheleſſe.

Cheſcune Arbitrement doit eſte expound et intend accordant al intent des Arbitratours, & ne my Literalment. 17. *Edw.* 4. 3. *Brian.* 21. *Edw.* 4. 39. *a. b. vide* 19 *Hen* 6. 36. *b. Markham.* Intent.

Mes ſi l'intent des Arbitratours ne eſtoit oue la ley: dong. les parties ceo performera accordant eux parolls in tiel ſence que agree ove le ley. 21. *Edw.* 4. 39. *b. Fairefax.* Intent.

The Cauſes of an Arbitrement being thus deciphered, there followeth next the Conſideration of the effects thereof.

The Effects of an Arbitrement are theſe which do enſue.

Transition in rem Iudicatam.

Per Arbitrement le Controuersie transit in rem Iudicatam. 49. Edw. 3. 3. a. Hanmer. 20. Hen. 6. 41. a. Paston. 9. Edw. 4. 51. a. Danby. 6. Hen. 7. 11. b. Hussey. Com fogassa. 6. a.

Et pur ceo

Iournient venu par payse mony.

Lou le party port action pur le tort a luy fait, est bone Plea que il eux submit al Arbitrement de tiels; qui agard que il paiera tant &c mes le iour de payment, de ceo nest vn core venu. 6. Hen. 7. 11. b. Hussey. 9. Edw. 4. 51, a. Chock. 20. Hen. 6. 12. b. Newt. 20 Hen. 6 40. a. b. Paston 28. Hen. 6. 12. 5. Edw. 4. 7. a.

Iour de payment

Mes si le iour de payment soit passe, il doit monstre que il tender les deniers al iour, & que il est vncore prist. 8. Hen. 6. 25. b. Martin. 16. Edw. 4. 8. b. Pigot.

Vncore prist.

Car,

Dene action.

Arbitrement per que les Arbitratours agard, que vn des parties paiera money, done action. 15. Edw. 4. 7. a. Chock. 16. Edw. 4. 9. a. Pygot. 17. Edw. 4. 2. b. Townssend. 17. Edw. 4. 8. a. Pigot. Fitzh. Natura breuium H. 121. a. 6. Hen. 7. 11. b. Hussey. 9. Edw. 4. 51. Danby.

Restore al primer action.

Et si les parties ne performe L'arbitrement, le parte est restore a son primer action. 49. Edw. 3. 3. a.

Restore al primer action.

Mes vncore est a son Election de auer Briefe de debt sur le agard, ou le primer Action. 49. Edw. 3. 3. a. 33. Hen. 6. 2. b.

Determine.

Mes si le payment soit fait, le primer tort est tout ousterment determin per le agard 4. Hen. 6. 1. a. 8. Hen. 6. 25. b. 21. Hen. 7. 28. b:

Ex que ensuit auxy

Double Action.

Si les Arbitratours a gardant, que vn des parties paiera tant des deniers, Et chacun de eux est oblige al

ant er

auter pur eſtoier al agard le party auera action ſur le agard, & auxy le fait ſi agard ne ſoit performe. 21. *Edw.* 4. 41. *b.* 33. *Hen.* 6. 2 *b.*

Si le ſubmiſſion ſoit per paroll & Arbitrement ſoit que vn des parties fairont vn collateral act, auter q. payment des deniers, ceo ne done action, & ſi ne ſoit execute in fait et ſatisfie, le Arbitrement nad aſcun effect; Et tel Arbitrement ne determyn le primer tort, 19. *Hen.* 6. 38. *a. Newton*: 20. *Hen.* 6. 19. *a. Markham.* 5. *Edw.* 4. 7. *a. Chock. Com fogoſſa.* 11. *b.* Collateral matter.

Vncore ſi le ſubmiſſion ſoit per obligation, ſi vn Collateral act ſoit agard deſte fait; ſi ceo ne ſoit performe, le obligacion ſera forfeit. 9. *Edw.* 4. 44. *a.* Collateral matter.

Thus much touching the effects of an Award.

A Conſequent thereof is, the Performance; wherin we are to Conſider, That.

Les Parties doient faire tout ceo que in eux eſt ceo performe. 21. *Edw.* 4. 39. *b. Fairfax.* Performance.

Si per le Arbitrement ſoit agard que vn act ſera fait le quel home poit performer, in deux manners lun voy per luy meſme, et per l'auter voy il doit auer l'aide d'un auter perſon: le party doit ceo performer per tel meanes que il ſolement poit faire ſans aid de l'auter. 21. *Edw.* 4. 40. *b. Huſſey.* Aſſiſtance.

Arbitrement ne doit eſte performe in part, et in part ne my. 6. *Hen.* 7. 10. *b.* Parte.

Mes Coment que Arbitrement ne poet eſte fait per les Arbitratours, part a vne temps, et part a auter temps: vncore ceo poit eſte performe part a vn temps et parte al auter. 8. *Edw.* 4. 10. *b. Fairfax.* Parte.

Les parties aueront Reaſonable temps a eux allowe pur le performer, D'un agard, ſi nul temps ſoit limitt. Temps.

20.

20. Edw. 4. 8. b. 21. Edw. 4. 41. a. b. &c.

Primer Act. *Si le act que les Arbitratours agard que l'un party performera, ne poit eſte performe, deuant auter Act primes fait per l'auter partie, ſi ceſt partie ne fait le primer act, l'auter eſt excuſe. 5. Edw. 4. 7. a.*

Tout a vn temp. *Arbitrement que l'un partie paiera mony, & l'auter fera Releas; ceo ſera fait a vn meſme temps, ſi ne ſoit obligation a performer le Agard. 21. Hen. 7. 28. b. Knightly, & Reade.*

Chacun performe ſon parte. *Mes ſi ſoit Obligation a performer le agard, donq; chacun doit performe ſon parte de ſoubs le peril de L'obligation. 21. Hen. 7. 28. b. Reede.*

Voide Award Quære. *Si Obligation ſoit fait pur eſtoier al Arbitrement coment q; le Arbitrement ſoit void in Ley, vncore ceo doit eſte performe, autermentle Obligation ſera forfeit 22. Hen. 6. 46. b. Port. per Cur.*

Void agard. *Mes ſi action ſoit port ſur tel void Agard, le Action ne ſera maintaine. 22. Hen. 6. 46. b. Port.*

Auerment. *Si le matter Contenus in le agard, & le matter contenus in le ſubmiſſion de que les Arbitratours doient agarder, differt in parolls, ou in circumſtance, les parties al Arbitrement ne ſeront receiue in ſute ſur ceo de auerrer que tout eſt vne. 7. 8. Eliz. 242. b. 52.*

Thus much hath beene ſpoken concerning Arbitrements, their Cauſes, Effects, and Conſequents.

There reſteth to accompliſh our intended Methode, that we adde ſomewhat touching that wherewith an Arbitrement is compared, matched and reſembled in the Booke Caſes.

Wherefore know you that,

Paria. *Chacun Accord reſemble vn Arbitrement.*

Diſſentia. *Vncore Chacun Accord doit eſte ſatiſfie oue Recompence;*

pence; et Accord ne done Action; lou del auter parte Arbitrement pur que les parties ſont adiudge de paier deniers, done action; & ne beſoique deſts pledc, execute come deuant ad apparus. 6. Hen. 7. 11. b. 5. Edw. 4. 7. a. 17. Edw. 4. 2. b. 17. Edw. 4. 8. a. Com. 6. a. Fogaſſa.

And thus farre forth for example ſake, haue we ſet out theſe Grounds and Rules of Arbitrements.

Whereunto if there were added, in their due places, the reſidue of the Rules and Grounds which may be collected out of the bookes of the Law concerning the ſame, and furniſhing both theſe and them with as many Caſes as might be applyed thereunto; the ſame Caſes being put at large vnder euery of their Rules, to demonſtrate that in particuler, which the Rule includeth in generall, the enterpriſe would proue (as I thinke) ſome ſhew of a Treatiſe, concerning this Title.

Which being no hard thing to accompliſh, thereby would appeare that it were neither vnpoſſible neither vnprofitable, nor altogether vnpleaſant, to reduce euery title of the Law particularly to a Methode; and ſo conſequently, the whole body thereof into a perfect ſhape, which now ſeemeth wholly without Conformitie, and altogether diſmembred.

Wherefore now, as touching the Materiall Cauſe of Rules and Grounds, thus much ſaid, may ſuffice.

Formall Cauſes and Grounds of the Law.

THe diuiſions of Grounds of the Law, as touching and concerning the forme, are in ſorte to be Conſidered. 1. Firſt, the Coherence of the words and the Matter. 2. Secondly, the manner of the Manifeſtation thereof.

For the Coherence of the Matter and wordes, there are to be regarded theſe two qualities.

1. Firſt, Veritie and
2. Secondly Amplitude or Generalitie.

Veritie of Propoſitions or Grounds conſiſteth of two ſorts: For they import either a neceſſarie or knowne truth which cannot be impugned: Or Contingent Veritie or Probabilitie, which may ſometimes notwithſtanding their ſhew of truth, be impeached of falſehood, and ſo be ſubiect vnto many exceptions.

The former of theſe are called Primarie Concluſions of Reaſon. And the later Secondarie Principles.

1. Thoſe of the firſt ſort are ſuch generall aſſertions of the Law, as are imprinted in the minde of euery Man, and diſcerned by the light of very Nature it ſelfe: which, as moſt certaine and vndoubted, neede no Confirmation or fortification, but of themſelues are moſt ſufficiently knowne to be true and not impugnable: which the Philoſophers doe call, *Primò & per ſe cognita*; *Communes animi Conceptiones & Notitiæ*, familiar to the Conceipt of euery perſon.

Notes

Notes Collected touching the Veritie of Principles.

PRincipiorum. Alia ſunt neceſſaria, Alia in rebus contingentibus cernuntur. Axioma verum, eſt, quando pronunciat vt Res eſt. Ariſt. li.1. Dem. cap.25.T.43.

Axioma verum eſt, aut { Contingens; / Neceſſitans. } Peter Ramus li. 2. dial. cap.3.

Neceſſarium Axioma, quando Semper verum eſt; nec falſum eſſe poteſt. Vnde Ariſtoteles, Vera quidem ſunt & perſpicua ea, quæ non ab alijs ſed à ſeipſis fidem habent. Peter Ramus ibidem. Ariſt. Top. lib.1. cap.1.

De primis Principijs.

PRincipia nihil aliud ſunt quam Propoſitiones immediatæ.

Ego propria cuiuſq; generis Principia appello, quæ, quod ſint, Demonſtratione probari non poſſunt: (Nam, quæ ſit verborum vſus et ſignificatio, tum Principiorum, tum eorum quæ ex Principijs efficiuntur, intelligendum eſt) Quod verò ipſa ſint Principia, citra demonſtrationem ponitur; Reliqua autem Demonſtratione concluduntur. Ariſt. lib.1. dem. cap.8.T.24.

Prima et principia pro eodem ſumo. Eſt autem Principium demonſtrationis Propoſitioi, quæ ob id immediata dicitur, quoniam nulla eſt alia prior per quam ipſa Confirmari poſſit. Ariſt. lib.1. dem. cap.2.T.5.

Io. Coraſ. de Arte Iuris. lib. Cap. 24. *Primaria principia dicuntur vniuerſalia quædam Iuris pronunciata, quæ omnibus hominibus ita ſunt impreſſa naturaliter et infixa, vt, velut indubitata et notiſsima, non alia egeant Demonſtratione, aut certè leui aliqua probatione Confirmentur.*

Ibidem. *Vnde et Communes animi Conceptiones et Notitiæ appellantur quod ſuapte vi & perſpicua ſit et euidens horum Principiorum veritas et Natura, quaſi ſine aliqua Dubitatione et Contradictione veluti ab omnibus Conceſſa, in diſputatione ſumantur.*

Of which ſort for Example are ſome of them before mentioned, and here againe to be remembred in this behalfe, in manner following.

Volenti non fit iniuria

Omne maius continet in ſe minus.

Qui ſentit Commodum ſentire debet et onus:

Fraus et dolus nemini patrocinantur.

With infinite other in vniuerſall Manner propoſed, and with not a few in ſpeciall ſet forth, As in Grants, as afore hath beene declared.

Quando aliquis quid Concedit, et id etiam concedit ſine quo res conceſſa eſſe non poteſt.

In Teſtaments.

Com. Greiſbr. 280. b. *Teſtamentum eſt morte confirmatum.*

In Rents.

Chacun Rent eſt iſſuant hors de terre.

With exceeding many other of like nature to be found in euery title or Tractate of the Law. The manifeſt truth and great Reaſon of which ſaid Grounds is euident to euery perſon of any Iudgement, and neede no proofe for demonſtration and eſtabliſhing of them.

2. Secondarie

2 Secondary Principles, are certaine Axiomes, Rules, and Grounds of the Law, which are not ſo well knowne by the light of nature, as by other meanes: and which although they neede no great proofe to be confirmed; becauſe they comprehend great probabilitie; yet many times are they, at the firſt ſhew, not yeelded vnto without due conſideration: and are peculiarly knowne, for the moſt part, to ſuch onely as profeſſe the ſtudy and ſpeculation of Lawes.

Probable they are ſaid to bee, becauſe, although the manifeſt truth of them be vnknowne, yet neuertheleſſe they appeare to many, and eſpecially to wiſe men, to be true.

Probabilia ſunt qua probant, autoribus, aut pluribus aut certe ſapientibus atque iis vel omnibus vel pluribus vel iis quorum ſpectata eſt & per ſpecta ſapientia. Ariſt. Top. l. 2. c. 1. Doctor and Student *l. 1. c. 5. fol. 10. a.*

And of this ſort in the Lawes of the Realme there are ſo many found, that ſome men haue affirmed, that all the Law of the Realme is the Law of Reaſon: becauſe they are deriued out of the generall Cuſtomes, and Maximes, or Principles of the Law of Nature or Primary coucluſions.

And for the knowledge of theſe Propoſitions there is a greater difficulty; and therefore therein dependeth much the manner and forme of Arguments in the Lawes of *England*.

Notes collected touching the difference betweene Primarie and Secondarie Principles.

Ariſt.l.1.c.2.T.5. *Principia immediata quæ in demonſtrationibus accipiuntur, in duo genera diſtribui poſſunt.*

Vnum eorum quæ quanquam demonſtrari non poſſunt, non tamen ita aperta, & per ſe manifeſta ſunt, ut neceſſe ſit ante cognita eſſe ei qui artem aliquam diſcere velit, quæ nos Poſitiones appellamus.

Altero genere continentur ea, quæ ita ſunt per ſe perſpicua, ut non poſſint non eſſe, omnibus multò ante cognita, & perſpecta quam quicquam doceatur; quæ Pronunciata dicuntur.

To like effect ſpeaketh *Ariſtotle* in another place, *Ea pro initio & propoſito ſumenda ſunt.*

1 *Quæ in omnibus.*

2 *Vel certe in plurimis rebus ineſſe videntur.*

The former ſort *Ariſtotle* ſeemeth to call, as afore ſhewed, *Pronunciata*, the other *Propoſitiones.*

And although in the Law of the Realme, they are indifferently called, without diſtinction, Rules, Principles, Groundes, Maximes, Eruditions, and ſuch like: yet the iudgement of *Maſſæus* herein is worthy obſeruation.

Ant. Maſſæus l.1.de exercitio Iuris peritorum. *Accurſius videtur non parum aberraviſſe à vero, cùm idem ſignificare voluerit Principia, Maximas, & Regulas; cùm (Ariſtotle auctore) cuiuſque ſcientiæ principia ſunt quædam propria, quæ quod vera ſint non contingit demonſtrari, & quæ per ſe, & non

non per alia fidem habent, quoniam nihil prius ſuperiúſque in ea ſcientia eſt per quod confirmari explicarique poſſint.

Talium autem Principiorum, nonnulla ſunt poſitiones, alia dignitates, ſic dictæ, ob id quod iure illis fides habenda ſit, cùm ea unuſquiſque audita ſtatim admittit : quale eſt iſtud : Totum unumquodlibet maius eſt aliqua ſua parte. Hæ rurſus appellantur Maximæ, Propoſitiones, & Communes animi conceptiones ; quod multorum ſcilicet intellectu facile percipiantur. Tales autem non ſunt Regulæ ; quæ licet ſint univerſalia Præcepta, indigent tamen probatione, & probari poſſunt : Nec tamen auditæ admittuntur.

Hee ſeemeth to attribute the name of Principles, Axiomes, and Maximes to the firſt ſort, and the name of Rules to the ſecond.

Of the ſecondarie Principles or Rules there are two kindes. Some deduced and drawne from the vſuall and ordinary diſpoſition of things (as hath been before declared) and by the obſeruation of humane nature diſperſed in the mindes of men, collected by long obſeruation : Whereof ſome are altogether vpheld in the Law vpon common preſumption, and entendment : Others doe reſt vpon diſcourſe of Reaſon deducted in Argument. But of the former, ſome are ſuch, as although they are but probable, and import no certaine truth, and therefore may notwithſtanding be ſometimes vntrue : yet neuertheleſſe for the great likelihood of them in humane actions, and the better to frame a conformitie, through the whole body of the Law, the ſaid Lawes permit

permit no allegation to impugne them, or any ſpeech or auerment to impeach their credit.

The firſt ſort of Secondarie Rules grounded vpon entendment.

OThers there are alſo that depend vpon entendment: But of the former kinde, this is one, grounded vpon naturall affection.

Com. Sharington & Pledal.

La ley ne voit preſume que aſcun voit lede ſon heire, ou auter que eſt procheni de ſon ſanck, mes que il voit plus teſt advance luy.

Which Ground, vpon the preſumption of naturall affection, is not ſuch, as that it ſoundeth alwaies true; (for in diuers perſons nature worketh diuerſly) Wherefore although this aſſertion ſhew how euery man ſhould be affected, notwithſtanding it is no proofe that all men are ſo affected. And yet neuertheleſſe this ſtrong entendment of Law, doth not permit any thing to impeach the ſame; and will not ſuffer any perſon bound by collaterall warranty (the reaſon whereof floweth herehence) to trauerſe ſuch affection, although there be neuer ſo pregnant proofe to encounter the ſame.

Notes

Notes touching the Definition, Diuiſion, and neceſſary Conſequents of Secondary Principles.

IVris Præcepta ſecundaria ſunt certa quædam Axiomata & Definitiones ſeu Regulæ, quæ non tam naturâ quàm civili aliquâ ratione & authoritate, aut communi mortalium uſu per hominum animos diffunduntur. Iohannes Coraſius de iuris arte cap. 26. lib. 1.

Quæ etſi plerumq; vera ſunt, nec valde egeant demonſtratione; non tamen ita, priuſquam preßius conſiderentur ab illis cognoſcuntur qui noſtræ ſcientiæ dant operam. Quapropter, levi aliqua & veriſimili ratione, ut ijs aſſentiantur, opus eſt.

See the manner and meanes how they are inferred by diſcourſe out of the generall Cuſtomes or Principles of Reaſon, and the example thereof vſed by the Author of the Dialogues of the Doctor and Student.

Preſumption or Entendment of Law, whereupon certaine of the ſecondary Rules are grounded (as before is ſhewed) are in two ſorts: for *ſpecies preſumptionum ſunt duæ: una, quæ legitimis probationibus regulariter refutari poteſt, quam communē licebit appellare: altera quæ reprobari non poteſt, quæ & ſpecialis rectè fortaſſe dicetur. Certè magno Reip. bono conſtituuntur huiuſmodi præſumptiones: nec poteſt fieri ut ſine præſumptionibus ulla certa iura aut ullæ certæ leges deſcribantur.* Ioach. Hopp. de iuris arte lib. 2. fol. 466. Ibidem.

Secondarie Principles are grounded either vpon

Entendment of Law, of which ſort ſome are ſuch as doe admit of no proofe to encounter them, and reſt vpon Entendment, but yet admit proofe to the contrary. Or diſcourſe of reaſon.

So likewiſe the Law vpon like common preſumption conceiued of the acts and behauiour of men, intendeth this Principle.

Com. Mauxel. 6.a. *Nul home ſans cauſe voile faire act a preiudice ley meſme.*

And hereupon the Law preſumeth that euery aſſertion and allegation proceeding from any perſon which ſoundeth to his preiudice and hurt, is ſo vndoubtedly true, as that there ſhall not be ſuffered any trauers or deniall of the ſame. Wherefore if in a *Præcipe quod reddat* brought of twenty acres of land againſt one, and he, before the Statute of *Coniunctim feoffatis*, had pleaded Ioyntenancy with another of deede; or ſithence the ſaid Statute, if he had pleaded Ioyntenancy by Fine with another; although the Plea be vtterly falſe, yet ſhall not the demaundant haue any anſwere or trauers thereunto; becauſe that when the demaundant by his Writ hath admitted him Tenant of the whole; and hee ſaith that hee was Ioyntenant with another; this other, if he bee falſe, may ſtop the Tenant by this Record; To ſay the contrary of his affirmation, and thereby may gaine the Moytie of the land, againſt him that hath ſo pleaded. And therefore, for that, that men are not wont to tell vntruths in diſaduantage of themſelues; and that the ſaying hereof if it were not true, will greatly be to the preiudice and hurt of him that affirmed it; thereupon the Law preſumeth, that it was true

true indeed; and will in no wiſe admit the trauers againſt the ſame; or giue the demaundant abilitie to impugne it; but hereupon preſently, the Writ ſhall abate, and no maintenance of the Writ for the cauſe aforeſaid, ſhall be allowed.

In like manner alſo matters of Record the entendment of Law doth giue an impeachable credit. And hereof alſo this rule of Law is drawne.

Matters de Record import in eux (per preſumtion del ley, pur lour hautneſſe) credit. *Com. Ludford 491. b.*

And therefore none ſhall be permitted to ſay, that the Kings Pattent vnder the great ſeale was made or deliuered at any other time then that wherein it beareth Date. No more then a man may ſay, That a Recognizance or Statute Marchant or Staple, was acknowledged, or any Writ was purchaſed at any other time, then that wherein it beareth Date. For an auerment that it was antedated, or that it was deliuered or acknowledged after the date, is an auerment tending to the diſcredit of the great ſeale, or of the Iuſtice or Officer of Record which recorded the Recognizance, or the Statute Marchant, or ſuch like.

In the dealings and affaires of Men, one Man may affirme a thing which another may deny. But if a Record once ſay the word, no man ſhall be receiued to auerre, ſpeake againſt it; or impugne the ſame: No though ſuch Record containe manifeſt and knowne falſhood, tending to the miſchiefe and ouerthrow of any perſon. *Lamberts Iuſtice of peace. lib. 1. cap. 13.*

And therefore whereas certaine perſons were Outlawed in the Kings bench, in the time of *Shard* 38. *Aſſ.* 21.

Iuſtice, and their goods forfeite, and their names likewiſe certified into the Exchequour with an Abſtract of their goods, It hapned ſo that the name of one (by miſpriſion of the Clarke) was, among the reſt certified likewiſe into the Exchequour, as outlawed and that he had goods to the value of ſixe pounds, whereas indeede the ſame man was not outlawed. And thereupon a writ iuſſued to the Sheriffe of that Countie, where the ſaid goods were ſuppoſed to be, to ſeaze the ſame to the vſe of the King, who returned that a Nobleman had ſeized the ſame goods; And thereupon iſſued forth another Writt out of the Exchequour, to cauſe him to anſwer the ſame goods ſo ſeized by him, who vpon the Returne of the ſecond writ, alleadged, that the partie whoſe goods he had ſeized, was not vtlawed: And *Greene*, one of the Iuſtices of the Kings bench came into the Exchequer with the perſon who was ſuppoſed out lawed, and there teſtified that he was not out-lawed; but ſhewed, that that which was certified was done altogether by the miſpriſion of the Clerke: Where *Skipwith* returned him this anſwer. That although all the Iuſtices would now record the Contrarie, that they could not be permitted nor any Credit might be giuen thereunto, whenas there was a Record extant, and not Reuerſed teſtifying the ſame Out-lawry: yea the Law ſo mightily vpholdeth the intended Credit of a Record, that it preferreth the ſame before the oathes of men, ſounding to the Contrarie, and in reſpect thereof, will not permit a verdit to be receiued, which might impeach the ſame.

And

And therfore whereas one brought a writ of waſt and aſſigned the waſt in diuers particuler things, and moreouer in a Meſſage and Tenants in Wood-Church; where amongſt other waſts aſſigued, the Plaintife ſhewed, that the Defendant had done and permitted waſte in the Hall of the ſaid Meſſnage, &c. The Defendant pleaded in this Action, that Woodchurch was a Hamlet of A. and no Towne of it ſelfe. Which Plea includeth a Confeſſion of the waſt to haue beene done in ſuch manner as was declared. And vpon this plea, the parties were at iſſue; with the which the Iurie were charged: And further it was giuen them in charge, that if they found that Woodchurch was a Towne of it ſelfe, and no Hamlet of A: as the Plaintife had ſuppoſed, that then they ſhould aſſigne damages ſeuerally for euery waſte Committed. The Iurie at length found, that Woodchurch was a Hamlet of it ſelfe, and aſſeſſed damages for certaine of the particular waſtes ſuppoſed ſeuerally, as they ought. And as touching the waſt ſuppoſed to be done in the ſaid Hall, they ſaid there was no ſuch Meſſuage. The Iudges reiected their verdit, becauſe it was contrary to that which was implyed by the Plea of the Defendant of Record: and ſo inforced the Iurie to giue damages for a waſt: which (indeed) was not done contrarie to the Conſcience of the Iuries; notwithſtanding that ſome of them made proteſtation, that in ſo doing they might be periured: Which wholly was done onely to vphold the Credit of the Record; and that the verdit (of Record) might not be contrarie, to that which was implyed by the Plea of the parties. 9. Hen. 6. 56. b.

Moreouer, there is a Rule of Law wholy grounded vpon Entendment which is this.

Liuery del fait ſera intend in le lieu ou le date fut.

The deliuery of a Deede ſhall bee intended to be where it beareth date.

Which Rule the Law vpholdeth for certaine truth, (although in very deed it may be at ſometimes vntrue) And therefore will not permit any proofe which may impeach the intended truth, of the ſaid propoſition. For Confirmation whereof, a notable caſe Cited in the 31. *Hen.6.* and by way of Argument alleadged in *Fogaſſa* his Caſe, may be produced; which was in this manner. An Action of Debt was brought vpon a Deede; The Defendant denyed the ſame; whereupon the parties were at iſſue; And the witneſſes produced to proue the Deede were examined where the Deed was deliuered: who anſwered: At *Yorke*; which was in another Countie then where the ſaid Deede bare Date; And hereupon the Defendant Demurred: And after vpon Conſideration, Iudgement was giuen againſt the Plaintife in ouerthrow of the Action founded vpon that Deed; which cannot be intended to be deliuered elſe where then at the place where it beareth Date.

31. *Hen.6. Com. Fogaſſa.7.b.*

Many Examples may be further produced to like effect, to proue that diuers Rules there are receiued in the Law which vpon preſumption and Common Entendment, to eſchew ſome notable miſchiefe or inconuenience, are ſo holden for Truth, that in no wiſe they ſhall be incountred; although indeede, as occaſion

occaſion may fall out, they doe containe manifeſt and apparent falſhood. But theſe allready in that reſpect alleadged may abundantly ſuffice for example.

Of like nature alſo there are in the Law other kind of Rules or principles; which although, they doe concerne contingent matters; and therefore may ſometimes be impeached, and found vntrue; Yet doe they carry a kinde of Credit alſo vpon Preſumption or Entendment of Law, although not ſo vehement as the former. The Second ſort of Secondarie Rules grounded vpon Entendment.

Wherefore although the Law doth receiue them *Prima facie*, and at the firſt ſhew, as likely, and giueth Credit vnto the Aſſertion contained in them, Yet Neuertheleſſe doth it admit proofe to the Contrarie, and ſo ſuffereth ſuch Præſumption or Entendment, which vpholdeth ſuch Rules, to be impeached, and controlled by a Contrarie tryall by pregnant proofe, and ſo doth permit any Auerment to be made againſt the ſame. For Example: It is a Rule in Law that a Verdict *ſera intenda touts ſoits vray tanq; il eſt reuers pur ceo q; il eſt iſſint troue perferment de 12. homes.* 20. Hen. 7. 11 b. Coningsby.

A verdict ſhall be intended alwaies true, till it be reuerſed, for that it is ſo found by the oath of twelue men.

And hereupon it is agreed for Law, That if a Iudgement be giuen erronioully, the partie grieued thereby ſhall not onely, haue his writ of Errour to redreſſe the ſame, but alſo a *ſuperſedeas* to Countermaund Execution thereupon. But if Iudgement be giuen vpon a verdict although the ſame 5 Hen. 7. 22. b.

verdict

verdict be vntrue, and the partie greiued doe bring his writ of Attaint, Yet neuertheleſſe he ſhall not, in that caſe haue a *Superſedeas* to ſtay Execution, for the intended truth, which the Law ſuppoſeth in the ſaid verdict. And yet the Law permitteth the falſehood in verdicts to be laid open, and puniſheth them with great ſeueritie 33. *Hen.* 8. 196. *Brookes caſe.* 4. *Edw.* 6. *Com.* 49.

20. *Hen.* 7. 11. *b.* *Coningsby.* If a Writt of *Conſpiracie* be brought againſt one, for that he gaue euidence before the Iuſtice of Peace at their Seſſions, concerning the ſuſpicion of a Felony ſuppoſed to be done by the Plaintife, vpon which Euidence, the Plaintife was indicted of the ſaid Felonie; and after found Not guiltie by a Iurie of twelue Men; It is no plea in this writt of *Conſpiracie*, for the Defendant to ſay, that the Plaintife was guiltie of the Felonie, For that were to encounter the Verdict; which ſhall be entended true.

And although the Law doe giue Credit, to all verdicts; Yet doth it not forecloſe the partie greiued thereby, but permitteth him to impugne it, and to impeach it of falſehoode, if he can, by his writt of Attainct.

Alſo there is a Rule in the Law, That

Com. Wrotſley. 193. *b.* *Feeſimple ou auter eſtate certaine conuay a vn ſera intend de continuer in le perſon in q. il eſt repoſe, touts foits durant meſme l'eſtate.*

An eſtate of inheritance or other eſtate certaine conueied to a man, ſhall be intended to continue in the perſon wherein it was repoſed alwaies during the Continuance of the ſaid eſtate.

Although this for Law be *Prima facie* intended true;

true; yet neuertheleſſe thereunto this muſt be added viz.

Sine ſoit mre Comment autermentceo eſt deueſt.

If it be not ſhewed otherwiſe how it is deuiſed.

By thus much ſaid, it is ſufficiently made manifeſt, that ſome propoſitions, Rules and Grounds of the Law are intended true; but yet proofe is allowed to encounter the ſame.

So hither to hath bin ſpoken of the *Veritie* of *Propoſitions*; whereof ſome are indeed and nature manifeſt true, and grounded on neceſſarie Reaſon; and other ſome are true alſo, but vpon matter contingent. *Contingent veritie* was ſaid to be of too kinds. The one grounded on common Preſumption and entendement of the Lawes, which likewiſe was ſubdiuided into two branches. Some of them ſuch as doe not admit any Contradiction to impugne them; For the certaine ſuppoſed truth (though indeed not alwaies found, in them, yet alwaies deemed by them) alloweth no Controll; The other ſort of Rules reſting vpon Entendement, are ſuchas are *Prima facie* ſuppoſed true, but yet no otherwiſe ſuppoſed true then till the contrarie be proued, and they impeached of falſe-hood: Of both which there hath beene ſhewed ſufficient examples.

Now therefore in order followeth the ſecond principall part of *Contingent Propoſitions* or *Grounds* framed vpon obſeruation of Nature, and diſpoſition of things, collected and drawne by diſcourſe of Reaſon, becauſe it cannot be equally euident to euery Mans capacitie. And for aſmuch as the ſaid Diſcourſe and manner of Reaſoning, through the

The ſecond principall kind of Contingent Propoſitions.

weakeneſſe of Mans vnderſtanding, and difficultie of the matter, may faile and be oftentimes deceiued in ſome Circumſtances which may and daily do occur through the varietie of particular matter, which againe (in Reaſon) may offer a Contrary reſolution; Therefore are thoſe *Grounds* not vniuerſally true, but ſubiect to many and manifould Exceptions. And yet neuertheleſſe true in all ſuch Caſes as are not comprehended vnder thoſe *Reſtraints* or *Exceptions*. Of which kinde we mentioned ſome in the beginning; As namely.

1. *Sublata Cauſa tollitur Effectus.*

2. *Qui tacet Conſentire videtur.*

3. *Quod initio non valet, tractu temporis non conualeſcit.*

4. *Quando duo Iura in vno Concurrunt, æquum eſt ac ſi eſſet in diuerſis.*

Euery of which many other of the like nature; though they be of themſelues, vpon the firſt viewe of great *Probabilitie*; yet neuertheleſſe, being with more earneſt Conſideration pondered, are found not ſo firme as they ſeeme, but are ſubiect to ſome controulment, and to be impeached with ſundrie inſtances and *Exceptions*. Of ſuch like the number is in manner infinite: at the leaſt many thouſands in our Law, which are publiſhed in the *French*.

12. Hen. 8. 2. b. Eliot. *Neſt Loial pur aſcun de enter in le terre del auter ſans ſon licence.*

It is not lawfull to enter in another mans ground without Licenſe.

Diſcent de Eſtate dinheritance in terr, toll le entry de ceſte q droit ad.

The

The diſcent of an eſtate of inheritance in Lands taketh away his entrie which hath right.

But theſe few ſhall ſuffice in this place for an Example.

Wherefore for aſmuch as the Minde of Man is beautified with two faculties or powers in qualitie different, though flowing from that which is in Nature indiuiſible; whereof the one we now call for diſtinction ſake (*Capacitie*) and the other (*Diſcourſe*).

By the former of which we apprehend, as with the inward eye, the naturall light and reſplendency of many *Primarie Propoſitions*, and knowne Motions; whoſe cleareneſſe and euidence cauſeth euery one to yeeld thereto their conſent.

And by the later we doe Collect, reaſon, argue, and infer of thoſe former Motions and Reſolutions, certaine *Secondarie Propoſitions* diſcended and deriued from the firſt, as branches from the Roote, or Riuers from the Fountaine; which by how much the more they are drawne from their ſping, by ſo much the more (by reaſon of the varietie of interpoſed Circumſtances) they are oftentimes obſcured and made leſſe cleare and euident.

And ſith that euery Science is not of like Certainty, by reaſon of the variable condition of the ſubiect whereupon it is imployed; ſo that rightly of Morall Philoſophy (conſiſting wholly of mans changeable and inconſtant conuerſation, and from whence indeed, the knowledge of all Lawes are in a generality deriued, and thereto to be referred) ſaid, the Philoſopher *Ariſtotle* right well in excuſe of his purpoſed

Ethice verò ſupponitur quaſi morali ſcientiæ, qui tractat de moribus. *Bract. l. 1. c. 1. 4. b.*

Ariſt. Ethic. l. 1. c. 3.

purposed Method in the deliuery of the same, That *Doctrina discernens honesta & turpia, tantis dubitationum fluctibus concutitur, ut multis lege tantum & opinione, non naturâ, constitutum esse ius videatur.* It followeth me thinketh, of necessity, that it is scarcely possible to make any secondary Rule of Law, but that it shall faile in some particular case: whence springeth this often vsed assertion, *Non est Regula quin fallat*: And therefore the Ordainers and Interpreters of Law, respect rather those things which may often happen; and not euery particular circumstance, for the which though they would, they should not bee able by any positiue Law to make prouision.

By reason whereof they doe permit, the Rules, Axiomes, and Propositions of the common Law, vpon discourse and disputation of reason, to bee restrained by exceptions; which are grounded vpon two causes. The one is Equity: The other is some other Rule or Ground of Law, which seemeth to encounter the Ground or Rule proposed: wherein, for conformities sake, and that no absurdity or contradiction be permitted, certaine exceptions are framed, which doe not onely knit and conioyne one Rule in reason to another, but by meanes of their equitie, temper the rigour of the Law, which vpon some certaine circumstances in euery of the said Rules might happen and fall out: *Et omnia benè coæquiparat*, as saith *Bracton*. Bracton. l. 5.

And therefore the Author of the Dialogues betweene the Doctor and Student describeth equity according to this the effect thereof here mentioned: Lib. 1. cap. 16.

which

which is that it is no other thing, but an exception of the Law of God or of Reaſon from the generall Rules of the Law of man, when they by reaſon of their generality, would in any particular caſe, iudge againſt the Law of God, or the Law of Reaſon: The which exception is ſecretly vnderſtood in euery generall Rule of euery poſitiue Law. And a little after, in the ſame place affirmeth, That equity followeth the Law in all particular caſes, where right and iuſtice requireth, notwithſtanding that the generall Rule of the Law bee to the contrary.

And the exception ſo framed vpon any Rule or Ground to the which it is annexed, doth not impeach the credit of the ſaid Ground; but being included therein, as aforeſaid, *Format Regulam in omnibus caſibus non exceptis.* *L. queſit F. de fundo inſtructo.*

But leſt ſome men might thinke, that whatſoeuer is ſpoken in the ſaid Dialogues touching equity might be onely vnderſtood of that equity which either enlargeth or reſtraineth ſtatute Lawes (and of which Mr. *Plowden* in his Appendix vnto the Argument of the caſe of *Eſton* and *Studd*, in his ſecond Commentaries ſo largely out of *Ariſtotle* and *Bracton* diſcourſeth. There followeth in the ſame place of the ſaid Dialogues, and in the Chapter next enſuing are propoſed two Axiomes, Groundes, or Rules, with their exceptions, there put for example, and which doe tend to the purpoſe and proofe of that whereof we now ſpeake.

And becauſe that thoſe ſaid Rules there mentioned are laſt of all here for example before propoſed,

it ſhall bee requiſite firſt of all to furniſh euery of them with examples.

But yet for the better vnderſtanding of that which is behoofefull to be knowne concerning equitie in Generall, we are to note that euery Rule with his exceptions or (to ſpeake otherwiſe in words) euery receiued difference in the Law (being indeede nothing but a Rule or Ground and his exceptions) doth either flow from equitie, or elſe reſult of the combining of two Rules together, as before hath beene declared.

The triple vſe of equity in the Lawes.

The vſe therefore of equitie is triple in our Law: For

1 Either it keepeth the common Law in conformity by meanes here mentioned.

2 Or it expoundeth the Statute Law.

3 Or thirdly giueth remedy in the Court of Conſcience in caſes of extremitie which otherwiſe by the Lawes are leaſt vnredreſſed.

Wherefore as all men endewed with the right vſe of reaſon, and conuerſant in the knowledge of any Law, muſt of neceſſity confeſſe, that euery Law doth ſtand vpon permanent Rules, as of Iron not to be bent or broken vpon this or that occaſion, or to be infringed vpon this or that occurrence (for elſe there neede no Court of Law, but all ſhould be one with the Court of Conſcience, and haue their proceedings framed according to the Arbitrary conceipt of the Iuſtice) So likewiſe neuertheleſſe, vpon euery circumſtance of time, perſon, place, and the manner of doing, there falleth out ſuch matter of equitie, that if Law ſhould be purſued according to the

the ſetled Rules thereof, *Summum Ius* (as *Cicero* ſaith) would prooue *Summa iniuria* : wherefore Law without equitie were rigour. And yet againe, of the other ſide, if all Lawes ſhould change and bee controlled as often in euery caſe as equitie would require, then ſhould there be (as aforeſaid) no Law certaine. And therefore it ſtandeth with good reaſon, that the common Law in ſome caſes, ſhould allow and follow equitie, as farre forth as the conſtancy of the Law would permit, and for the better conformity of one Rule thereof with another : which common Law againe in other caſes ſhould refuſe equitie for the better auoiding of confuſion.

Notes collected out of Authors touching exceptions of Rules, and from whence they ſpring.

EQuitie therefore in all the vſe thereof, and in euery of the threefold before mentioned obſeruations hath a double Office, Effect, or Function.

Sometimes it doth amplifie.

Sometimes againe (when reaſon will) it doth diminſh or extenuate.

A deſcription of the former is that which *Bracton* yeeldeth, *Æquitas eſt rerum conuenientia quæ in paribus cauſis paria deſiderat iura, & omnia bene coæquiperat, & dicitur æquitas quaſi æqualitas.* *Lib. 1. c. 4. ¶. 5. Com. 467.*

This enlargeth the common Law; for it teacheth to proceed in the ſame from one caſe to another like thereunto;

Bracton lib. 1. cap. 2. ¶. 7.

thereunto; and so to proceed, that *Si aliqua noua & inconsueta emerserunt, & quæ priùs usitata non fuerint in regno; si tamen similia euenerint, per simile iudicientur; cum bona sit occasio à similibus procedere ad similia.*

And therefore these cases differing neuer so much in circumstance, so that they doe concurre in reason, should be ruled after one and the selfe same mannner. For, *Vbi est eadem ratio, idem ius statuendum est.* But hereof we shall hereafter haue more ample occasion to speake, when we take in hand the last of *Aristotles*, before remembred, obseruations; namely *Similitudinum collectionem*, or *cognitionem.*

This equitie moreouer in Statutes enlargeth the letter to cases not comprehended within the words; if neuertheless they doe stand in equall mischiefe.

Lastly in all cases of mischiefe, for redresse whereof Positiue Law or ordinary Rules of Law are defectiue; equity extendeth forth her hand in the Court of Conscience to helpe therein the said defect of the Lawes.

2 The second kinde of equity doth againe of the other side restraine the ample or generall rules of the common Lawes by ministring exceptions, in like manner as is before remembred.

And in statute Law it doth also limit the ouerlarge letter, drawing it wholly to, and keeping it within the bounds of the intent & meaning of the makers.

In the Court of Conscience it giueth likewise comfort, considereth all the circumstances of the fact, and is as it were tempered with the sweetnesse of mercy, and mitigateth the rigour of the common Law;

Law; and leauing the inflexible ſtiffe Iron rule, taketh in hand the Leaden Lesbian rule: which being rightly ſwaied in caſes of extremity, and herein, enioyning the common Law of her ſtrait proceeding, iſſueth this ſentence full of comfort to the afflicted, *Nullus recedat à Cancellaria ſine remedio.* 4. Hen. 7.

Wherefore if the ſame equity bee vſed in ſuch caſes onely as are of extremity (as indeed it ſhould) it cauſeth the Chancellour, into whoſe hand the managing thereof within this Realme is committed to be in high eſtimation of honour: ſo that *In eius ſorte iuris dicendi gloriam conciliat magnitudo negotij, gratiam æquitatis largitio; in quâ ſorte ſapiens Prætor offenſionem vitat æquabilitate decernendi; benevolentiam adiungit lenitate audiendi.* Cicero in Orat. pro Murena.

And thus much by the way hath beene ſpoken of equitie, upon the occaſion of ſpeech of exceptions which doe reſtraine Rules and Axiomes, that the originall fountaine from whence ſuch exceptions doe ſpring, might the better and more manifeſtly be conceiued.

And therefore thus much thereof ſufficeth, reſeruing the reſt to his due and natiue place.

Now wee will proceed with the firſt example publiſhed in the ſaid Dialogues of the Doctor and Student, concerning the exceptions attributed and annexed vnto Maximes, Rules and Grounds.

There is ſith hee a generall prohibition in the Lawes of *England*; That

It is not lawfull for any man to enter into poſſeſſion or freehold of another without authority of the owner, or of the Law. The firſt Ground.

This Ground may be proued by many particular caſes and authorities : for the Law of property would that euery mans owne ſhould be priuate and peculiar vnto himſelfe ; and therefore it is ſaid, That

12.Hen.8.2.b. Elliot. *Neſt loyal al un de enter en mon terre ſauns mon licence.*

21.Hen. 7.27.b. Kingſnel. Rede *Lou mes beaſts ſont damage feſant in auter terr, ie en puis enter pur eux enchaſer hors ains convient a moy primerment a tender amends.*

If my beaſts be damage feſant in anothers ground, I may not enter and driue them out, but I ought firſt to tender an amends.

21.Hen.7.13.b. Rede. *Si home ad meriſme giſant ſur laterr d'un auter, il ne poit iuſtifier le entry in le terr a veyer ceo ſi ſoit in bon plyte.*

If one haue his timber lying on anothers ground, he cannot iuſtifie his entry to ſee his timber in good caſe:

13.Hen.7.9.b. *Si maiſon ſoit leaſe a moy et ieo mit mon biens en ceo & puis mon leaſe expire les dits biens eſtant in le meaſon, neſt layal pur moy a ore pur enter en le dit meaſon de eux prender.*

If a houſe bee leaſed to me wherein I put my goods where they lye till the leaſe be expired, I cannot now enter into the houſe to take them.

14.Hen.8.1.b. Brudnel. *Si ieo mit mon chiual in voſter ſtable & vous ne voiles ceo deliver a moy, et ieo enter et enfrend voſtre ſtable, ieo ſera puny pur l'entry, et le enfreinder del ſtable, mes nemy pur le priſel del chivall.*

If I put my horſe into your ſtable, and you will not deliuer him vnto me ; if I enter and breake your ſtable, I ſhall be puniſhed for entring and breaking the

the ſtable, but not for taking my horſe.

Si ieo command un a deliuer a vous certaine beaſts que ſont en mon Park, neſt loyal pur vous de enter en mon Park, et prender les dits beaſts, oveſque ceſtique ieo iſſent command per reaſon de ceſt commandment; car vous purra aſſets bien eux receiver coment que vous demurres hors del Park. 18 Ed.4.25.a.

If I command one to deliuer you certaine cattell out of my Park, it is not lawfull for you to enter into my Park with him whom I commanded to deliuer them: for you may receiue them though you ſtay without the Park.

Si ieo baile biens al home, ieo ne puis iuſtifier l'entry en ſon meaſon pur prender les biens, car ceo non fut per nul tort que ils viendra la, mes per l'act de vous ambideux. 9.Ed.4.35.a. 21.Hen.7.13.

If I deliuer my goods vnto a man, I cannot iuſtifie the entring into his houſe to take them &c.

Si le vicont ad fierifacias pur leuier deniers recouers vers aſcun, uncore ſi per force de ceo il ne voile enter et detraſer le meaſon de ceſti vers que le recouery fat, il ſera de ceo puny pur ceſt entry en treſpas. 8.Ed.4.4.a.

If the Shriefe hath a *fierifacias*, to leuie money recouered, if by force thereof he enter, and breake the houſe of the debtor, he is ſubiect to an action of treſpaſſe.

Si un Vicar ad offrings in un Chapel de quel Chapel le franktennant eſt in moy; il ne poiet ceo iuſtifiera l'entry et debruſer de ma Chapel pur eux prender hors. 2.Hen.4.24.a.

If a Prieſt haue offerings in a Chappell, the free-

hold of which is in me, hee cannot iuſtifie the entry and breaking the Chappell to take out his offrings.

38.Ed.3.10.b. *Si home eant in ſa Garren demeſn ſpring un Feaſant, et leſſa ſa falcon voler a ceo que vola in le Garren d'un auter home, et la priſt le Feaſant, neſt loial pur le owner del falcon, pur enter in le auter Garren, et de la emporter.*

If a man ſpring a Pheaſant in his owne Warren, and let his falcon flye at her, and ſhe flyes into anothers Warren and there taketh the Pheaſant, hee that oweth the Hawke cannot enter into the others ground to take her.

Hauing proued the former ground with theſe ſufficient former authorities, let vs now deſcend vnto the examination of ſuch exceptions of the ſaid propoſition, as may exemplifie our former ſpeeches; whereof ſome certaine being orderly deliuered and confirmed with ſome authorities of booke caſes, I hold it ſufficient ſo to make manifeſt our meaning at this preſent; leauing a more exact conſideration thereof to more fit place and opportunity.

We are therefore to conceiue that there is an infallible rule of Law, That

Le Common wealth eſt deſſe prefer devant aſcun private wealth.

The Common wealth is to bee preferred before any priuate wealth.

By reaſon whereof leſt contradiction betweene the ſaid propoſed rule and this now in hand ſhould enſue vpon ſome circumſtance which may fall out; therefore the ſaid laſt ſpecified ground, concerning the

the benefit of the Common wealth, doth miniſter an exception for the better vnderſtanding of the aforeſaid rule propoſed, namely, That

Home poit iuſtifie ſon entre en le franktenement ou ſur le poſſeſſion de un auter ſi ſoit pur le benefit del Common wealth. The firſt Exception.

A man may iuſtifie his entry into anothers freehold, if it be for the good and benefit of the Common wealth.

And therefore theſe caſes following depending therupon are produced to proue & manifeſt the ſame.

Si ieo vien in voſtre terre, et occide un Fox, un Gray, ou un Otter, pur ceſt entry ieo ne ſera my puny, pur ceo que ſont beaſts encounter le Common profit. 12.Hen.8.10.c. Brooke.

If I come into your ground to kill a Fox, Gray, or Otter, for this entry I ſhall not be puniſhed; for they are beaſts againſt the Common profit.

Pur le Common wealth meaſon ſera plucked down ſi le prochein Meaſon ſoit ardent. 13.Hen.8.16.b. Shellye.

For the good of the Common-wealth an houſe ſhall be pulled downe if the next be fired.

Et Suburbes del Citie ſeront plucked downe in temps de Guerr, pur cco q. ceo eſt pur le common wealth: Et choſe q. eſt pur le common wealth chaſcune poit faire ſans aver action. 8.Edw.4.35.b. Littleton.

And the ſuburbes of a Citie ſhall be razed in the time of war: And that which is for the good and profit of the Common weath any man may do without danger of anothers action.

Home iuſtifiera ſon entry in auter terr in tempore de Guerr pur faire Bullwarke in defence del Realme, Et ceux choſes ſont iuſtifiable & loial pur main- 21.Hen.7.b. Kingsmil.

tenance del common-wealth.

A man may iuſtifie his going into another mans ground in time of war to make a Bulwarke in defence of the Realme &c.

13 Edw.4.9.a. *Pur felony, ou pur ſuſpicion de felony home poit de bruſer meaſon pur prender le felon, car il eſt pur le Common wealth pur prender eux.*

For felony or ſuſpition thereof a man may breake a houſe to take the Felon; For it is the good of the Common-wealth, to haue him taken: With ſuch like.

Moreouer becauſe there is another Rule of Law, That

Nul prendra benefit de ſon tort demeſme.

No man ſhall take benefit of his owne wrong.

And ſometimes it falleth out that men, through malice to haue others in danger, would not ſticke to lay a traine to intrap them to the intent, that they might, by ſome colour, for their further vexation, proſecute ſuite againſt them; To vphold the Conformity of Law vpon thoſe two grounds, that one of them do not encounter the other, there is a ſecond Exception to the former Rule namely, That

The ſecond Exception. *Si home ſoit le Cauſe pur que vn torcious Entry eſt fait ſur ſon Poſſeſſion, il nauera de ceo Remedy: mes le party que ad iſſent enter; ſur le matter diſcloſe poit ayd luy meſme & iuſtify tiel Entry.*

If a Man be the cauſe that a wrongfull Act or Entrie be made vpon his poſſeſſion, he ſhall haue no remedie for it, but the partie who hath entred may diſcloſe the matter to iuſtifie his entrie.

9 Edw.4.35.a. b. *Home ad vn Molyn, & beau courge per le terr d'une auter*

auter al dit Molyn, le Tenant del terre miſe ſtakes deins le dit eaw ſur q. il edify vn meaſon, pur reaſon de quel l'eaw ne poit venercy bien al dit Molin come devant: Le Tenant del Molin enter en la dit terre, & enraca les ſtakes, per q. la dit Meiſon eſchew: Et in Treſpas pur Entry en la dit terr & enracer la meaſon tout ceſt matter pur auoider le dit Nuſance fut plede per le defendaunt & tenus bon Iuſtification.

A Man hath a Mill, and the water running to it cometh through anothers ground, and he faſtneth ſtakes vpon the ground in the water, and buildeth an houſe; by reaſon whereof the water cometh not to the Mill aſwell as in time paſt, the Miller entreth vnto the others ground and breaketh downe the ſtakes, and thereby the houſe falleth; If the other bring an Action of treſpaſſe againſt him, for this, he may ſhew that he did it, to auoyde wrong done to himſelfe, and iuſtifie the deede.

Home auer pris les beaſts de I.S. & eux impound in ſa terre, & vint vn pur Repleuy meſme les beaſts, Et pur ceo q. ceſt q. ad eux deſtraine ne voilet ſuffer les beaſts deſts Repleuy, il oue ares & ſagitts, ſagitta al ceſti q. vint pur eux repliuy eaut in le porte de meſme le cloſe lou ils fuere impound, pur q. il pur doubt enfrenit le cloſe in auter lieu, et enchaſe hors les auers q. fueront impound, Et pur coſt entry et infrenider del Cloſe, le Pleintife port treſpas, Et ſur tout ceſt matter diſcloſe ceo ſemble bone Iuſtification. 20. Hen. 6. 18. a.

A Man hauing taken *I.S.* his goods, and impounded them in his owne ground, a Repleuin was brought for thoſe Cattle, and he that deſtraind them would not ſuffer any Repleauin to be made, but ſtanding

ding in the gate of the Close where the Cattle were impounded, shot at him that came to make the Repleuin, whereupon he broke the Close in another place, and drew forth the said beasts: For which breaking the Plaintifes Close, he brought an Action of trespasse; but vpon this matter disclosed it was taken for a good iustification.

21. Hen. 6. 39. b. *In Trauers, le defendant dit, q. pur ceo q. le Plaintife violet aver le defendant in son dainger, il Commaund vn son seruant de chaser les beasts de defendaunt in les blees del Plaintife mesme, et le defendant cy hast wenit q. il auoit notece de ceo, il enter en le dit terre le Plaintife, et eux enchase hors: Et ceo*

9. Edw. 4. 35. a. Lutleton. *fuit tenus bon Plea nient amountant al generall issue.*

In an Action of trespasse, the Defendant said, that because the Plaintife would haue the defendant within his Danger, he Commaunded one of his seruants to driue the Defendants beasts into the Plaintifes Corne, And the Defendant affoone as he had notice thereof, entred into the Plaintifes Close and draue them out; This was taken for a good Plea, and not amounting to the generall issue.

37. Hen. 6. 37. a. b. *In trauers pur entry in le close &c. Del Plaintife le defendant iustifiera, pur ceo q. le Defendant fuit Chinauchant en le roial chimin q. gisoit pres le meason del Plaintife, quand il vint la encounter la dite mese, la vient le Plaintife oue Arke et sagitts et fist vn assault sur le defendant, pur que il avo de son Chival, et fua in la dit mese, et ouster in le dit close; Et puis reuint in le dit chimin. Et ceo fuit tenus bon Iustification, si il voile adde a ceo q. le Chymin est in mesme le ville q. le meason est, ou*

in

in quel vile ceo eſt, et q. le fuis del meaſe fut ouert al temps: per q. le defendant iſſint diſt accordant.

In an Action of Trauerſe for entering into the Plaintifes cloſe, the Defendant iuſtified, for that he ryding in the kings high way, which lay neere to the Plaintifes houſe, the Plaintife ſet vpon the Defendant, when he came neere againſt the Plaintifes houſe, and aſſaulted him with bow and Arrowes, Whereupon he forſooke his horſe and fled into the houſe, and ſo through it into his Cloſe, and after returned into the high way; And this was taken for a good Iuſtification, if he had ſhewed further that the highway was in the ſame towne where the houſe was, and ſhewed in what towne the houſe was, and that the doore of the houſe was open &c.

Moreouer where there is a ground or rule of Law, as hath beene often before remembred, That *Quando aliquis quid concedit, et id concedere videtur ſine quo res conceſſa eſſe non poteſt.*

Hereof enſueth a third Exception to be annexed vnto the ſaid former Ground in this manner.

The Third Exception.

Si home ad intereſt ou authority deriue de aſcun perſon, owner, et poſſeſſor del ſoile: le quel ceſty a q. le intereſt ou authority eſt done, ne poit accomply ſans Entry in la terr ou meaſe de ceſti q. iſſent done la intereſt ou authority, la ſon entry eſt imply in la dit intereſt ou authority: Et pur tel cauſe ſon entry la ſerra iuſtifiable.

Com. Kidw. & Braud. 71.a.

Le Abbe de Hyde fait leaſe d'un ferm rendant Rent a ſon Monaſtery vient al mains le Roy Hen. 8, per le ſtatute de Diſſolutions, q. puis ceo grant ouſter al

eſtranger : le leſſee del dit ferme poit bien venir al dit Monaſtery la a tender la dit Rent, Et ceſti q. ad le poſſeſsion de ceo nauera enint trauers pur tel entry.

Com. Kidw. & Braud. 71. b.

Si A : Soit tenus a B : in vn obligation de 20. l. pur paier a luy 10 l. a tel iour la intant q. nul lien eſt expres pur le payment. A : eſt tenus a querer B. inquocunq. liew q. il ſoit : Et ſi B : eſt in ſon meaſon demeſne, et vient a luy la, et tender le argent, il ne ſera treſpaſſer pur le vener la Mes ſil vſt eſte in la meaſon de aſcun auter home la il ſeroit treſpaſſor al dit home : Mes in lauter Cas intant q. il fut aſſentant q. il paira a luy les dits deniers, et in ceo fut il containe que il fut aſſentant que il vener a luy pur ceo purpoſe : il enſuit ex conſequenti que il n'puniera luy pur ceo choſe a que luy meſme fut priuy et agreement.

18. Edw. 4. 25. b.

Si ieo enfeoffe G. et face lutre d' atterney a. C. a deliuer ſeiſni a G : pur le venider ſur la terre et pur l'entry fait per G. de prender la livery, G. ne ſera puniſh in treſpas Car il eſt impoſsible que il reccivera livery ſi non que il entra in le terre, et il eſt imply in le feſance del feofment que il viendra ſur la terr de prender Livery.

9. Ed. 4 25. a. 13 Hen 8. 15. b. Englefeild.

Si home moy grant pur foder in ſon terre, et de faire un trenche de tiel font ou ſpring iusques a mon place, ſi puis le Pipe eſt eſtopp ou enfreint iſſent que l'eaw iſſu hors, ieo ne poi foder in ſon terre pur mender le Pipe, Car ceo ne fut grant a moy &c. Mes ceſt opinion fut deny per tont le Court Car fut dit, que il poit enter et foder pur ceo mender, pur ceo que eſt incident a tel gront a ceo diſcourer et d'amender.

9. Hen. 6. 29. b.

Intrauers pur entry en un meaſon le defend aut dit que long temps devant le treſpas que A. fut ſeiſi del

del dit meaſon in fee, & q. ceo eſt in tel ville & deuiſable per teſtament, per que le dit A: deuiſe le dit maiſon a vn feme in taile, & que ſil deuy ſans iſſue que ſon Executor ceo vendroit, & fait le defendant ſon Executor & deuy la feme entermary oue le Plaintife et puis deuy ſans iſſue pur que le defendant enter ſur le poſſ: le Plaintife a voir, ſi fut bien repaire al intent de ſcavoir a quel value le reuercion fut a vender, & ceo fut tenus bone Iuſtification.

In Trauers pur Entry in meaſon et priſel del biens le defendant dit que le Baron del Plantife fut poſſeſſés des duts biens et fuit ſeiſy del dit meaſon in fee, et fait le defendant, et auter ſes Executours et devy poſſeſſés des dits biens, et le defendant vint al dit meaſon apres la mort le Teſtatour pur adminiſter et trovant ſhays del dit meaſon ouert il enter et priſt les biens, et ceo fut tenus bon Plee per tout le Court. 2. Hen. 6. 15. b. 16. a.

By reaſon alſo that there is a Rule of Law. That *Le poſſeſſion del terre de cheſcun home eſt ſubiect al Iuriſdiction del ley.*

Thereof alſo this Exception following holdeth likewiſe place in reſtraint of the ſaid former generall Rule or Ground, that is to ſay,

Lou le ley done al aſcun authority de enter in auter ter ou ſur le poſſeſſion del auter, il iuſtifiera ſon entry. The fourth exception.

Si ieo ſuis ſeiſi de terre in fee ſur bon et indefeſible title, et vn eſtrange demand ceſt terre per precipe vers un auter eſtranger, et ſur ceo le vicount per force del precipe vient ſur la terre ove ſommoners, et ſummon luy vers que le precipe eſt port, et puis le demandant recouer vers luy per default ou per iſſue try ſur certaine point, et perforce de Haberi facias ſeiſniam le vic Com. Mauxel 13. a.

vient arere & miſt ceſty que ad recouer in ſeiſni ; ieo ne puniera le vicont pur le primer vener ne pur le ſecond vener in le terre, pur ceo que le vicont ne fait riens mes execute le mandement le Roy come il ad in charge, et mon Poſſeſſion eſt chargeable a coſt Iuriſdiction del Roy & ſes miniſters.

Littleton Villenage. Com. Mauxel 13.a. *Si home fait leaſe pur vie, & un vilain purchaſe le reuercion, ſemble a Litt. que le ſignor del villein poit maintenant vener al terre et clayme meſme le reuercion, et per tel clayme le reuercion eſt maintenant in luy, et per tel vener a le terr et act fait il neſt treſpaſſor.*

Com. Mauxel 13.a. *Si vilen purchaſe advowſon pleni d'incombent, le ſignior del vilain poit vener al dit Elgliſe, et claime le dit advowſon, et pur ceo le Incumbent ne puniſhera luy per tiel vener al dit Elgliſe.*

11. Hen. 4. 75. b. *Intrauers le defendant plede que il fut ſeiſy del meaſon et terre et ceo leaſe al plaintife pur terme de ans, et que fut certifie que waſt fut fait et il enter in le cloſe & meaſon pur veiwer ſi waſt fut fait, et le huis del maiſon fuit ouert, & demand Iudgement et ceo fut tenus bon barr ; a que le Plaintiſe replica que il la demurr encounter le volunt le Plaintife un iour et un nuict, &c.*

Hitherunto haue we expreſſed certaine exceptions of the fore ſpecified Grounds which are deriued from the reaſon of ſome other Grounds and Rules of the Law, and which reaſon would ſhould be added, as reſtraints vnto the ſaid former Rule of Law firſt remembred for conformities ſake, and that the Law no way be impeached of contrarieties. Now reſteth alſo that we deliuer ſome few other exceptions

ons vnto the ſaid generall Rule drawne likewiſe from the fountaine of equitie; which are ſuch as doe enſue.

Sith it were voide of all reaſon and conſcience that a man ſhould puniſh a wrong done vnto him, by the which he either ſuſtaineth little or no detriment or damage, or at leaſtwiſe more benefit then he ſuſtaines preiudice: Therefore this exception vnto the ſaid generall Rule, is among other likewiſe allowed for law. That. Exceptions miſtred by equitie.

Lou le party ſur que poſſeſſion home fait tortions entry eſt plus benefit per tiel entry que preiudice la home bien iuſtifiera la dit tortions entry. The firſt exception.

Which the caſes following doe likewiſe at large ſufficiently confirme.

Si ieo ſue in peril deſte murder in mon cloſe, ou in mon meaſon, il eſt loial a cheſcun de enfrender mon meiſon ou cloſe pur moy ayder, pur ceo que eſt pur mon benefit. 12. Hen. 8. 2. b. Pollard.

Si ieo voy voſtre beaſtes demeſne in voſtre corne, et ieo eux enchaſe hors, ieo ne ſera my puny pur ceo que fut pur voſtre aduantage, et vous aves inter eſt in les beaſtes: Mes ſi ieo chaſe les beaſtes d'un eſtranger hors de voſtre corne, ieo ſeray puny pur ceo; car vous puiſſes aver remedy pur ceo; ſcil: per diſtreſſe. 13. Hen. 8. 15. b. Norwich.

Si ieo voy le Chimney de mon vic in urant, pur ſaver les choſes que ſont deins ſon meaſon, ieo iuſtifiera l'entry in le meaſon, & deprender les biens que ieo troue de deins pur eux ſaver. 21. Hen. 7. 27. b. Palmes.

In trauers de Parco fracto, le defendant iuſtify le trauers pur ceo que fut controvercy perenter luy, & le ſeigneur de Huntingdon Plaintife pur le overture 20. Hen. 6. 37. a.

d'un gorce, et pur ceo que le dit ſigneur fut in le dit Parke hunting, il enter pur les portes eant overt a monſtrer a luy ſes euidences concernant le dit gorce et ceo fut tenus per tout le Court bone Iuſtification.

Againe, the like equity doth miniſter one other exception of the like quality; for it were vnconſcionable and vnreaſonable that a man ſhould bee puniſhed for a wrongfull entry, whereas he is compelled ſo to doe, and cannot without his great preiudice eſchew the ſame: And therefore it is holden for Law, That

The ſixt exception.

Si home enter ſur le poſſeſſion de un auter, lou il ne poit auterment faire ſans ſon grand preiudice, ceo ne ſera deeme tiel entry de que il ſera puny.

13. Hen. 8. 16. b. Browne.

Si home ad Querck creſſant in midds de trois maiſons, et il deſcoupa ceo, et le Querckeſchet in terr d'un auter, ſi il iuſtify in travers il covient de alleager que il ne auterment puit faire.

6. Ed. 4. 7. b.

Home de coupa thornes que creſſ in ſon terr et ils eſchaont in terr dun auter, & il enter & eux prender hors, ſil ne poit in auter maner faire, ceo luy excuſera.

Doctor and Student. ver. 10. Ed. 4. 7. b. 22 Ed. 4. 8. b. 6. Ed. 4. 7. b.

Si home chaſe avers per le chymin, et les beaſts happont de eſcaper in les blees de ſon vicin, & ceſty que eux enchaſe enter freſhment in le terr de eux enchaſer hors, pur ceo que ils ne ferront aſcun damage, il iuſtifiera tiel ſon entry in trauers.

And thus much hath beene ſaid touching the firſt Ground propoſed in the ſaid Dialogues of the ſaid Doctor and Student, which hath beene proued in particular with caſes, and thereunto haue beene annexed certaine exceptions which haue likewiſe beene

beene fortified with *booke caſes* and authorities whereby the former aſſertions haue not onely beene exemplified, but alſo thereby it doth plainly appeare, That almoſt euery diſpoſition in the Lawes, *de qualitate* or *de iure* is in conference of Maximes, and reſteth betweene the Rule and the exception, which is either miniſtred by reaſon of equity, or vpon ſome other Rule or Axiome. So that euery difference ſhewed betweene caſes, is nothing elſe but the Rule and his exceptions; the effect whereof briefely is ſet forth by *Morgan*, who ſaith: That

Maximes ne doient eſte impugne, mes touts temps admit mes les maimes per reaſon poient eſte confer et compare l'un one leauter, coment que ils ne varient: Ou per reaſon poit eſte diſcuſſe quel choſe eſt plus procheni al Maxime ou meane perenter les Maximes & quel nemy: mes le Maximes neunque poient eſte impeach ne impugne, mes touts dits doient eſte obſerue et tenus come firme Principles de eux meſmes. Com. Col. lib. 27. a.

For the better vnderſtanding whereof, wee may note that all matters of debate which may be referred to the controuerſies or queſtions *de qualitate* or *de iure*, as hath beene ſaid, haue either commonly a Maxime of the one part, and a Maxime of the other; or ſeuerall reſons of each part deriued from ſundry Maximes; or elſe that there is a Maxime of the one part, and there is equity and reaſon which doth miniſter an exception to that Maxime or generall Rule: So that all diſceptation herein is, as hath beene ſaid, in conference or comparing of Maximes and Principles together diſcourſing, which thing is directly vnder the reaſon of the ſaid Maxime; and what

what matter or circumſtance may make a difference, and will be by exception exempted from the ſame; as more at large hereafter in the declaration of the vſe of theſe Maximes may be made manifeſt and apparent.

Now reſteth moreouer to proſecute the ſecond Axiome or Principle propoſed in the ſaid Dialogues, namely, that which followeth there in the ſeauenteenth chapter of his firſt booke, that is to ſay:

The ſecond Ground.

It is not lawfull for any man to enter vpon a diſcent.

Which ground being expounded by *Littleton* in his chapter of diſcents to extend only to diſcents of an eſtate of inheritance and freehold, and not of a reuerſion or remainder, all which followeth after in the ſaid chapter, are nothing but caſes of exceptions vnto the ſaid grounds, as it is euident vnto euery one that conſidereth the ſame, and therefore ſhall it heere be needleſſe long to inſiſt thereupon. Neuertheleſſe it ſhall be expedient to ſhew ſome exceptions thereunto, eſpecially ſome certaine, of ſuch of them as being exceptions vnto the ſaid Rule, are againe reſtrained with other exceptions. Becauſe there is a Rule of Law, that

First exception Littleton Garranty 279.

Laches ou folly ne ſera impute a un enfant de luy preiudice.

Therefore leſt contrarietie might happen in conſequence of reaſon betweene the ſaid Rule of diſcents, and this Rule laſt remembred: there is miniſtred by the meanes of this later Rule, an exception vnto the ſaid former ground namely, that

If

If an infant haue right of entry, he may enter vpon a diſcent. *Littleton diſcents cas. 402. 20. Hen. 6. 28. b.*

This exception, although it doth import great probabilitie of truth, yet is the ſame like vnto the Ground in this reſpect, namely, that it is alſo ſubiect to be reſtrained with another exception, *viz.*

If an infant, or ſuch priviledged or excepted perſon haue a right of entry, and a diſcent of thoſe lands is had to one that hath a more ancient right; the party hauing ſuch ancient right, ſhall be remitted: and both the right and entry of the infant taken away.

And this exception enſueth of another generall Rule of Law, which is, That

An ancient right ſhall alwaies be preferred before an other meane right or title.

The ſaid exception vpon exception grounded vpon the laſt remembred Rule, may be plainely proued by this caſe.

If Tenant in Tayle doe diſcontinue and after doe diſſeize his diſcontinuee, and during that diſſeiſein the diſcontinuee dieth, his heire within age; and after the Tennant in tayle doth die ſeiſed; and this land deſcendeth vnto the iſſue in tayle, the heire of the diſcontinuee being ſtill within age; This is a remitter, and the entry of the heire of the diſcontinuee is tolled, notwithſtanding that the Ground and Principle is, that the laches of the enfant ſhall not preiudice the enfant. And the cauſe is the ancient right the iſſue had. *11. Ed. 4 1. b.*

Moreouer the former Generall Rule touching diſcents that toll entries, hath among other, alſo this, exception. The ſecond exception.

Litt.fol.59. cas. 403. A diſcent had during the Couerture, ſhall not
9.Hen.7.24.a. toll the entry of the woman or her heires after the
2.Ed.4.24.a. Couerture diſſolued.
7.Ed.4.7.b.
20 Hen.6.18.b. But becauſe there is a Generall Rule of Law, That None ſhall be fauoured in any Act wherein folly may be imputed to him.

From whence is deriued alſo this more ſpeciall Rule or Ground.

Com.Rauth. 366.a. Couerture ſhall not ayde a woman where the ta-
42.Ed.3.12.b. king of a Husband which reſpecteth not her bene-
9.Hen.7.24.a. fit may be imputed to her folly.

Hereof enſueth this exception vpon exception to the ſaid former remembred Rule, That

41.Ed.3.12.b. where folly may be imputed to the woman for
9.Hen.7.24.a. taking of ſuch a Husband as will be heedleſſe of her
Litt.fol.95. cas.404. benefit, there a diſcent, during the couerture, ſhall
3.4.Phil.Mar. 144.n.57. bind the woman and her heires.

Much more might be ſaid of like effect, but this for example ſake ſhall ſuffice.

Now reſteth briefely to ſay ſomething touching the firſt propoſed Latine Rules: Of which the forme was this,

Com.72.b. *Sublata cauſa tollitur effectus.*
Com.268.a.
Com.294.a. This Rule is not abſolutely true; for the Philoſopher from whence it is borrowed, doth vnderſtand it, *De cauſis internis, non de externis.*

Pratana. The Ciuill Lawyers doe reſtraineit in this manner *Hæc autem Gnoſis ſine Regula, de cauſa finali, non de cauſa impulſiva intelligitur.*

The common Law of the Realme, thus;

Sublatâ unâ cauſâ, ſi alia remanet, non tollitur effectus.

The

The ſecond Rule ; which was this, *Qui tacet conſentire videtur*, is verified with this exception.

Si ad eius commodum & utilitatem ſpectat, præſens & tacens pro conſentiente habetur. Prateus l. 7. c. 3. fol. 911.

The third Rule was this,

Quod initio non valet, id tractu temporis non conualeſcit.

Which Ground may bee confirmed with many caſes, yet is the ſame Ground reſtrained with this exception, becauſe That

Habet locum in his tantum quæ ſtatim debent valere, & nullam ſuſpentionem habent. Decius.

If a man make a leaſe for life of land vnto *I. S.* and after doth make a leaſe for yeares vnto *I. N.* of the ſame land to begin preſently, This leaſe being made by word, is void ; for the freehold in the firſt leaſe is more worthy, and by law intended to be of longer continuance then the terme in the ſecond leaſe: yet if the firſt leaſe die, or ſurrender afore the ſecond be expired, the reſidue of the terme is good. 37. Hen. 8. Brooke. Leaſſes 48. Com. Smith & Stapleton 433. a. Com. Greiſbrooke 422. a.

If the father deuiſe his land vnto his daughter and heire apparant, and after leauing his wife *enceinct*, or with child with a ſonne, vpon the death of the father this deuiſe vnto the daughter is voyd, for that ſhe is his heire ; but after, when the ſonne is borne, it is good. 5. Ed. 4. 6. Per Billing quod fuit conceſſum & Abridge per Fitzh. tit. Aſſiſ. 27.

The fourth Rule of the ſaid Latine rules before ſet downe, was this,

Quando duo iura in uno concurrunt, æquum eſt ac ſi eſſet in duobus.

This Rule hath exception grounded vpon another Rule, that is, That

Com. 57 b. *Vigilantibus & non dormientibus iura subueniunt.* Or to the same effect; *Vigilantibus non dormientibus iura subueniunt.* And therefore

In causes de negligence ou laches divers drouts concurrant in un person ne seront deeme si come ils fussent in divers persons.

Com. Stowell 372. b. Where, if *Tenant pur auter vie* be, the remainder for life ouer to another, the remainder in fee to the right heires of the *Tenant pur auter vie*, If the said *Tenant pur auter vie* be disseised, and the disseisor leuie a fyne with proclamations, and the fiue yeares doe passe, and after *Cesti que vie* dyeth; and after also dyeth he in remainder for life; hee which was *Tenant pur auter vie* shall not haue other fiue yeares after the death of the *Tenant* for life in remainder to pursue his right for the fee simple.

Vpon like reason, if a Bishop be seised of an Aduowson in the right of his Bishopricke, and the Church become voyd, and six monthes do passe; the Bishop shall not haue other sixe monethes as Ordinary, the same Church being in his Dioceese, as he should haue if the same Church were of the Patronage of another person, although hee bee in one respect Patron, and in another Ordinarie.

Hitherto haue we entertained discourse as touching the verity of Axiomes, Rules, and Grounds; which, as hath beene shewed, is either necessary or contingent.

Contingent verity was diuided into two branches: the one resting vpõ the entendment of Law; the other being deriued from the disposition and nature of humane things, by debate and discourse of reason.

Of

Of the firſt ſort there are two kindes ; for ſome propoſitions there are, although of themſelues but onely probable, yet neuertheleſſe are ſuppoſed of ſuch certainty, that no averment ſhall bee receiued to encounter the ſame. Otherſome, although they be by the Law intended true, *Prima facie*, yet neuertheleſſe the ſame Law alloweth an averment, and admitteth proofe to impeach the ſame.

Thoſe moreouer which reſt vpon diſcourſe of reaſon, are ſubiect to diuers exceptions, the materiall cauſe whereof is, the infinite variety of circumſtances that in all humane actions doe happen.

The forme and nature of the exception is perceiued and knowne by this effect following ; in that it reſtraineth the ground vnto which it is connexed.

The efficient cauſes are two, *viz.* Equity or ſome other Ground of the Law importing contrarietie. And the end thereof is conformity and coherency of Law agreeable vnto Iuſtices whoſe miniſter the Law is.

Moreouer as occaſion hath bin offered in the declaration of the cauſes from whom Exceptions of Rules doe ſpring, there hath beene ſhewed the vſe of equity in the common Law, Statute Law, and Chancery, by the two effects thereof, application and reſtraint; the one enlarging, the other abridging.

Wherefore now reſteth to ſpeake of the ſecond principall part, concerning the forme of Axiomes, namely, generallity : The conſideration whereof, bringeth to memory, that God in his moſt excellen worke, of the frame of tranſitory things, though he hath furniſhed the world with vnſpeakable vari-

ety, thereby making manifeſt vnto all humane creatures, to their great aſtoniſhment, his incomprehenſible wiſdom, his omnipotent power, & his vnſearchable prouidence, yet, being the God of order, not of confuſion, hath admitted no infiniteneſſe in nature (howſoeuer otherwiſe it ſeeme to our weake capacities) but hath continued the innumerable variety of particular things vnder certaine ſpecialls; thoſe ſpecialls vnder generalls; and thoſe generalls againe under cauſes more generall, lincking and conioyning one thing to another, as by a chaine, euen untill we aſcend unto himſelfe, the firſt chiefe and principall cauſe of all good things. And this is that which *Plato* out of *Homer*, was wont to call *Iupiters golden Chaine*.

The eye whereby we doe ſee and viewe, and the inward hand whereby we doe reach and apprehend theſe things, is mans vnderſtanding, which is wholly imployed about vniuerſality as about his proper obiect, by meanes whereof, in all things rationall, being diſcouered by the vſe of reaſon, mans vnderſtanding for the attaining of knowledge proceedeth from the effect to the cauſe, and againe from the cauſe to the effect; that is from the particular to the ſpeciall, and from the ſpeciall to the generall; and ſo to the more generall, euen to a principall and primary poſition or notion, which needeth no further proofe, but is of it ſelfe knowne and apparant. And ſo againe from ſuch chiefe and primary Principles and propoſitions to more ſpeciall and peculiar Aſſertions, deſcending euen to euery particular matter.

But

But that, of this which hath beene ſaid, ſome example might be ſhewed, eſpecially in this matter, which we now haue in hand, namely, concerning the Grounds and Rules of the Law of *England*; let one of the propoſed Grounds firſt before mentioned ſtand here for an example, *viz.*

Nihil eſt magis rationi conſentaneum, quam eodem modo quodque diſſolvere quo conſtatum eſt.

This principle being a Rule of reaſon containing great probability, and being of the number of thoſe that before we ſaid to haue beene deriued from the obſeruation of the nature of things, which though it be ſubiect to manifold exceptions, yet neuertheleſſe as a generall Rule, the ſame is verified in many ſpeciall Axiomes; and they againe diuerſly ſubdiuided into many more peculiar propoſitions; as the example of theſe following may make manifeſt.

1 *Ceſty que eſt charge pur Record doit luy diſcharger per Record.*

2 *Ceſty que eſt charge per fait doit luy meſme diſcharge per fait, ou per auter matter cy haut.*

3 *Ceſty q̄ eſt charge forſq̄ pur parol, poet eſte diſcharge pur parol.*

Of which generall Propoſitions there can be made no better Reaſon then by the commemoration of the ſaid firſt aforeſhewed generall Rule.

Moreouer, the firſt of the laſt aboue remembred comprehendeth vnder the generality thereof certaine other more ſpeciall Rules:

As

In det ſur arrerages de accompt que eſt matter de Record, le party doit diſcharger luy pur matter

cy

cy haut, & nemy per ſpecialty, ou fait ou auter matter que neſt cy haut. 6. Hen. 4. 6. a, 3. Hen. 4. 5. a. 11. Hen. 4. 79. b. 13. Hen. 4. 1. a. 8. Hen. 5. 3. b. 3. Hen 6. 55. a. 4. Hen. 6. 17. b. 20. Hen. 6. 55. b.

In det ſur recouery, home ne ſera diſcharge mes per matter cy hout : ou a tiel effect. 6. Hen. 4. 6 a.

Vnder the ſecond Rule or Ground before propoſed touching a diſcharge where the party is charged by matter of ſpecialty ; thoſe ſpeciall Rules following are likewiſe comprehended.

In nul caſe home ne poit avoide ſingle obligation, ſans auter ſpecialty de auxy haut nature. 1 Hen. 7. 14. b 5. Hen. 7. 33. b 11. Hen. 7. 4. b.

Home que ad enfreint covenant ne pledera matter in diſcharge de ceo ſans fait. 3. Hen. 4. 1. b. 1. Hen 7. 14. b. 21. Hen. 6. 31. a.

Home ne diſchargera luy meſme d'un annuitie que charge ſon perſon ſant ſpecialty. 5. Hen. 7. 33. b. 33. Hen. 8, 51. a. Dyer.

The firſt rule of theſe laſt remembred Grounds, namely, touching obligations, is againe diuided into diuers particulars ; as for example.

Arbitrement ne diſchargera home de un duty due per un obligation. 8. Hen. 7. 3. b. 6. Hen. 4. 6. a.

Si le obligee deliuer l'obligation al obliger come acquittance, & puis ceo priſt de luy, & comence ſute ſur ceo, ceſt delinery ne ſera diſcharge del obligation. 1. Hen. 7. 17. a. 33. Hen. 8. 51. a. Dyar. 22. Hen. 6. 52. b.

The other following concerning Indentures of Couenants, may likewiſe be diuided into other more particular aſſertions : but to avoyde rediouſneſſe, theſe already ſhewed abundantly manifeſt our meaning,

ning, and therefore may ſuffice:

The vſe of generall Rules and the obſervations of their ſpecialls.

The vſe of this kind of obſeruation of the generallity of Rules and Propoſitions is manifold.

Firſt, things propoſed in the generallity are beſt knowne and moſt familiar to our conceipt, ſith they be the proper obiect of our vnderſtanding, as before is declared.

Secondly, they doe better adhere and ſticke in memory, ſith Intellectiue memory is (as the vnderſtanding is) imployed about vniuerſall and generall things.

Thirdly, vniuerſall Propoſitions are the precepts of Art, and therefore they are called perpetuall and and eternall: for no Art, Science, Method, or certaine knowledge can or may conſiſt of particularities: for the orderly proceeding of euery Art, Methodically handled, is from the due regard had of the generall, to deſcend vnto the ſpecialls contained vnderneath the ſame: wherefore it enſueth hereof, that generall Propoſitions are the moſt ſpeedy inſtruments of knowledge: for experience, which wholly is gotten by the obſeruation of particular things (being depriued of ſpeculation) is ſlow, blinde, doubtfull, and deceiueable, and truly called the miſtreſſe of fooles.

Notes collected out of Authors touching the obſeruation of generall Propoſitions.

IF perchance vpon occaſion of ſome former ſpeeches here publiſhed touching the vniuerſallity of Grounds, there be demanded this queſtion.

Queſtion. Why the Lawes of *England* at the firſt and from time to time, had not beene publiſhed after this Method of generall and ſpeciall Rules with their exceptions.

Anſwere 1. I anſwere thereunto, that many ancient writers attempted that kinde of writing, and accompliſhed the ſame according to their ſeuerall and ſundry gifts more or leſſe perfect each then other : As by the treatiſes of *Glanvile*, *Bracton*, *Britton*, and others appeareth.

2 Secondly I ſay that foraſmuch as daily new queſtions came in debate whereof before had beene no reſolution, and wherein many times the leaſt variety of circumſtances doth alter the Law ; therefore our Anceſtors thought it more convenient, to be rather gouerned by an vnwritten Law, not left in any other monument, then in the minde of man ; and thence to be deduced by diſceptation & diſcourſe of reaſon : and that when occaſion ſhould bee offered, and not before.

3 Thirdly, it is more conuenient and profitable to the ſtate of the common wealth to frame Law vpon deliberation and debate of reaſon, by men skilfull and learned in that facultie, when preſent occaſion is offered to vſe the ſame, by a caſe then falling out and requiring Iudiciall determination : for then is it likely, with much more care, induſtrie and diligence to be looked vnto ; and much more time of deliberation is there taken for the mature deciſion thereof, then otherwiſe upon the eſtabliſhing of any poſitiue Law, might be imparted concerning the ſame.

4 Laſt of all, ſith all good Lawes require perſpicuity

ity and plaineſſe ; and that in generallity, for the moſt part, lurketh *obſcurity* ; therefore there is nothing of more force and effect touching the making and framing of a good Law, then the preſent occaſion offered, ſith thereby it brought to light, that which otherwiſe would not aſmuch (many times) as be thought vpon, and giueth occaſion to diſpute that which none would haue thought euer ſhould haue come in queſtion. And therefore not without due conſideration among the Romans, *Diſputationes fori*, and with vs *Demurrers* haue euer beene allowed as originalls of Law.

As touching the manifeſtation of Rules, all are affirmatiue or negatiue : wherein though the affirmatiue be, for many cauſes, the more worthy; yet ſuch negation as implyeth affirmation (and therefore called pregnant) is not without ſome vſe in the ſetting downe and deliuering of exceptions and generall Rules. And thus much touching the forme of Rules, Grounds, and Axiomes.

The efficient cauſe of Rules, Grounds, and Axiomes is the light of naturall reaſon tryed and ſifted vpon diſputation and argument. And hence is it, that the Law (as hath beene before declared) is called reaſon ; not for that euery man can comprehend the ſame ; but it is artificiall reaſon ; the reaſon of ſuch, as by their wiſdome, learning, and long experience are skillfull in the affaires of men, and know what is fit and conuenient to be held and obſerued for the appeaſing of controuerſies and debates among men, ſtill hauing an eye and due regard of iuſtice, and a conſideration of the common wealth

wherein they liue ; for well saith *Aristotle*, *Hoc quidem perspicuum est, leges pro ratione Reipub. esse scribendas.* And of this reason that wee speake of, *Tully* hath a noteable saying. *Ratio est societatis humanæ vinculũ, ut ratio, quæ dicendo, communicando, disceptando, iudicando, conciliat inter se homines, coniungit, & retinet naturali societate.* Wherefore sith the Grounds of Law are the foundation of Law, or at least wise the Law it selfe deliuered in manner of compendious and short sentences and propositions ; that which is the efficient cause of Law, must likewise be the efficient cause of those Rules and Axiomes.

Aristl. l. 3. Pol. c. 7

Cic. 1. Offic.

Iohannes Corasius de arte iuris lib. 1. cap 20.

Inasmuch then as *Primaria efficiens causa iuris, est natura & ratio civilis, ex quibus potissimum leges emanant, & veluti scaturiunt.* The same nature and reason are likewise the principall and originall efficient cause of the Rules, Axiomes, Grounds, and Propositions of the Law ; I meane *Civilis ratio*, that is reason respecting iustice and the common wealth.

This reason hath in the written workes of the Lawes of this Land, either beene plainely published and expressed in the bookes of Law, vpon deceptation of cases in debate, and left vnto posterity as the Lights, Rules, and Directions, whereby the said cases so called into question, were at the last decided and determined.

Or else it is not at all expressely published in words, but left neuertheless implyed and inclined in the cases so decided, and therein doth as it were lye hidden ; and yet neuertheless to be easily, with industry

duſtrie collected and inferred vpon thoſe Caſes decided, and doth neceſſarily follow vpon the reſolution of the ſame, and being thence drawne, may abundantly ſerue to infinite vſes, in the determinating of other doubts, which daily doe and may come in debate. Wherefore ſith in the Law (as in other Sciences) all arguments and diſputation doe either conſiſt of expreſſe proofe and allegation of Authoritie (which are called *Inartificiall Arguments*) or elſe of application and inference; as well the Rules to bee collected vpon Inference and application of other Caſes, are to bee regarded and to bee produced, as thoſe which are direct authorities. And foraſmuch as in very few caſes of doubt newly riſing in debate, and called into queſtion and controuerſie, expreſſe proofe and pregnant authoritie can be found; the Lawyer is moſt beholding to Inference and Application, wherewith hee is inſtructed and taught, that Caſes different in circumſtance, may be neuertheleſſe compared each to other in equalitie of Reaſon; ſo that of like Reaſon, like law might be framed. And by how much Application and inference doth more depend vpon wit and Art, then the producing of expreſſe Authoritie; by ſo much the more it excelleth the ſame, ſith the Allegation of expreſſe Authoritie, reſteth wholly vpon Induſtrie and Memorie in publiſhing and noting that which hee findeth already framed to his hand

Expreſſe Rules, Axiomes, Grounds and Poſitions of the former ſort are publiſhed in the booke of Law, either in the Lattin tongue, as are the former generall Rules firſt mentioned, and alſo infinite o-

ther of that kinde; or elſe in the French; in which tongue the Reports of forepaſſed Caſes are publiſhed vnto the vſe of poſteritie, and wherewith the ſaid bookes of yeares and tearmes (almoſt in euery caſe therein found) are fully furniſhed. So that all, though it ſhall be needleſſe to make manifeſt that by Example, which of it ſelfe is euident; yet ſtill to purſue the former Methode and order hitherunto obſerued, we ſhall eaſily perceiue the ſame in this ſhort caſe hereafter expreſſed.

Vn home avoit a luy et ſes heires le nomination del Clerke d'un Eſgliſe a vn Abbe, et le Abbe doit preſenter ouſter le Clerke nominate al ordinary, oré le Roy ayant les poſſeßions del Abbey ad preſent ſon Clerke al dit Eſgliſe eſtant voide ſans aſcun nomination. Et le opinion del Court fut, que le party que aueroit le nomination, auera Quare impedit vers le Incumbent tantum, ſans aſcun deſte noſme Patron: Car le Roy ne poit eſte ſue come diſturber: Tamen fut dit q̄ le Roy ne poit eſte Inſtrument al aſcun home. Et Shelley dit que il eſt Inſtrument a chacun home: Car per luy chacun Subiect ad Iuſtice a luy miniſter.

The Principles, Maximes, Rules, or Grounds expreſſed in plaine words in this caſe, and which are indeed the very reaſon of the Reſolution therein taken, are theſe.

1 *Le Roy ne poit eſte ſue Come diſturber.*

2 *Lou le roy preſent per tort, Quare Impedit ſera port vers L'incumbent ſole ſans aſcun deſte noſme Patrone.*

3 *Le roy ne poit eſte inſtrument al aſcun home ſc. come ſon ſeruant.*

4 *Per*

4 *Per le Roy cheſcun ſubiect ad Iuſtice a luy miniſter.*

5 *Le roy eſt inſtrument a chacun home purminiſter a luy Iuſtice.*

So that the Reaſons of euery Reſolution in any booke Caſe being reduced into ſhort Sentences, Propoſitions or Summarie Concluſions are the Grounds Rules, and Principles that we doe meane and ſpeake of in this place.

Such Summarie Concluſions, Corolaries, Reaſons, Grounds, or Propoſitions therfore as afore declared are deliuered in the bookes of Reports in two manners.

Sometimes without any note or marke that they are Grounds or Rules, but onely as laid downe and diſperſed in the Arguments and Reſolutions as ſhort Reaſons of the opinion or determination there expreſſed as in the laſt example appeareth.

Sometimes with a note or marke that they are Grounds, Rules, and Maximes, and are expreſly inueſted with ſuch names, as in the entrance of this treatiſe hath appeared. And thus much of the Grounds or Poſitions expreſſed in the bookes.

Now as touching the ſecond ſort, which are to be collected, and inferred out of the Caſes left reported, wee plainely may perceiue the notable vſe of ſuch collection, in reading aduiſedly the Commentaries of Mr. *Plowden*, or other the beſt bookes of Reports; or diligently obſeruing any notable Argument made at this day in any the Queenes Courts in matter of *Demurrer*, where wee may not thinke that euery caſe cited or alleadged out of the bookes for proofe

of

of the Controuerſie, is therefore alleadged becauſe it hath expreſſe matter therein publiſhed in plaine words, and tending to the reſolution of the point in queſtion: but at ſometimes, and that moſt commonly, ſuch proofe is produced vpon inference, and yet neuertheleſſe, ſufficiently pregnant to approue the matter whereunto it is rightly applyed: which inference and application proceedeth wholly vpon collected Rules and Axiomes included in the reſolution of thoſe Caſes produced although the ſame bee not expreſly ſpoken or publiſhed therein.

Wherefore notwithſtanding, the beſt meanes of the collection of the ſaid Rules depending onely vpon Meditation, and reſting wholly vpon the ſagacitie, wit, induſtrie, and iudgement of the Student, (becauſe euery mans ſeuerall conceit is in it ſelfe ſundry) may beſt be referred vnto the Student himſelfe: yet neuertheleſſe, ſhall it not bee amiſſe here to manifeſt ſuch direction therein as may be obſerued with ſome fruit.

1 Firſt, after the Caſe read, let vs conſider with our ſelues, and meditate in our mindes, to what ſeuerall purpoſes the ſame caſe may be applyed, and what matter, or ſeuerall matters the reſolution of the ſaid Caſe can confirme. Which when we haue conſidered of, it ſhall bee good for our memory to commit them to writing, in manner, and according to this example following.

33. Hen. 8. 48. b. n. 1. Dyer. *Fut moue ſi Tenant in tayle d'un Manour, a que vilains ſons regardant, en feoſt vn des vilains d'un acre per cel del Manor, et devy, coment que le Manor diſcend al iſſue in tayle, vncore il ne poit ſeiſer ſon vilain tanque*

tanque le acre ſoit recover.

Vpon meditation had of this Caſe, what it will proue, theſe Propoſitions or Rules following may eaſily be collected.

1 *Lou home ad forſque vn action al principal choſe la il nauer benefit del acceſſary, tanque il ad per recouery continue le principal.*

And becauſe here the whole principall is not diſcontinued, but onely one Acre, thereof may be collected, That

2 *Regardancy ou Apendancy neſt ſolement al tout le Manor, mes chacun acre del demeanes.*

Moreouer, becauſe the principall in this Caſe, *viz.* the Acre diſcontinued, cannot be recontinued without ſuite to be attempted againſt the Villen; it followeth in Reaſon, that he ſhall not be infranchiſed thereby: Whence alſo this Axiome is to be confirmed or proued, That

3 *Neceſſary ſuite ew vers vn villen per le ſignor ne enfranchiſe le villen.*

Hereof hath appeared that although none of theſe Propoſitions bee expreſſed in the reſolution of the ſaid Caſe, in the booke wherein the ſame is left reported; yet neuertheleſſe are they neceſſarily imployed in the reſolution of the ſaid Caſe, as before hath beene declared.

But if the Caſe ſo read doth conſiſt of many points or ſeuerall queſtions ſunderly debated, euery of them may likewiſe be ſunderly and apart conſidered of, according to the manner before ſhewed.

A ſecond meanes, by Inference to collect, ſuch Rules and propoſitions as are before declared, is by

way of Argument by Syllogiſme: For ſuppoſing the ſaid Caſe to be denyed to be Law which wee haue read. Let vs endeauour to draw the immediate Reaſons thereof into a ſyllogiſme for confirmation of the ſame. So that thereby, foraſmuch as all Rules out of the Law are of two ſorts, that is, either being the Reaſons of the Caſe, or the Caſe contracted ſhortly it ſelfe, by ſuch manner of Argument, the Maior, and firſt Propoſition of the ſaid ſyllogiſtical Argument, will bee the generall Reaſon of the ſaid Caſe: the Minor or ſecond Propoſition, will be the particular Reaſon: and the concluſion will bee the contracted caſe it ſelfe: Which alſo will ſerue as a ſecondarie Rule to determine other Caſes of equall Reaſon called into controuerſie. For example herein, we will take the opinion of *Hulls* in 9. *Hen.* 4. 8. *a* in the end of a Caſe there argued, where he holdeth for cleere Law, That

9. Hen 4. 8. a. *Si vn home fait fine pur vn treſpas dont il fut endite ſon boache ſera eſtopp a dire que il neſt my culpable, ſil ſoit eint implead apres.*

But becauſe the ſame is denyed in *Hen.* 6. wee endeauouring to proue the ſame by ſyllogiſme, ſhall not onely confirme it, but alſo exemplifie our former ſpeeches.

Maior] *Nul ſera permit a denyer ceſt iniury pur que il ad fait ſatisfaction, ou ad ſuffer puniſhment.*

Minor] *Mes ceſty que ad fait fine pur vn offence ad fait aſcun ſatisfaction et in ceo ad eſte puny.*

Concluſio) *Il q̄ ad fait vn fine pur vne treſpas ou auter offence ſera eſtopp a ceo denier apres.*

Euery of theſe propoſitions bee eſt-ſoones confirmed

med not onely with the Caſe before ſpoken (for as they doe proue the Caſe, being the immediate Reaſons thereof; ſo are they to be proued againe by the Caſe as by their effect) but alſo with ſundry other Authorities found in the bookes of like effect.

A third obſeruation of Propoſitions and Axiomes may be drawne from the conſideration of the Titleing words; or words which doe yeeld matter of effect; whereof in the Caſe laſt remembred are ſuch as doe follow; namely.

Fyne, Eſtoppel, Enditement, Nonculpable, Party, &c.

And herein is to bee meditated and conſidered what Rules may be deriued and collected out of the ſaid Caſe, and be referred to euery of the ſaid Titles: As namely,

Vnder Fynes.

1 *Fine fait pur vn offence proue, ceſty q̄. fait le fine voluntarunt, deſte culpable del dit offence.*

2 *Fine fait per vn offence cauſera ceſty q̄. fait le offence q̄. il ne ceo deniera apres.*

Vnder Enditement, theſe.

Si home ſoit Convince, d'un offence ſur vn Enditement, q̄. eſt al ſute le Roy, il ne deniera le dit offence, ſil ſoit apres de ceo implede al ſute del Party.

Vnder Eſtoppell, theſe.

Home ſera eſtopp per matter de Implication q̄. imply le contrary de ſon diſant de Record.

Vnder Non Culpable, theſe.

NOn Culpable ne ſera plede per aſcun lou per implication il ad confeſs le cauſe del action.

Vnder party, theſe.

SI offence ſoit Commit cy bien al Roy que come al Party condemnation al ſute d'vn d'eux, aydera l'auter in ſon ſute.

4 A fourth manner of obſeruation is to referre vnto euery Ground or Rule ſo collected, a Rule, more generall, ſo proceeding from the ſpeciall Rule vnto the generall Reaſon, and from that generall Reaſon vnto a more generall: As out of the ſaid firſt Caſe may be drawne this generall rule.

9.Hen.4.8.a. *Home ne ſera permit a denier ceo que deuant il ad confeſs per implication de Record.*

Vnder which Ground not onely, the firſt propoſed Caſe of 9. *Hen.* 4. 8. *a.* may be comprehended; and diuers others of like effect and purpoſe, and which doe concurre vnder the ſaid Generall Rule; As for example.

*Stamf.*155.*a.* *cap.*62. He which is arraigned, after hee hath pleaded either in Barre or in Abatement of the Appeale whereon he was arraigned, may plead ouer *Not guilty* to the felony: Except the Barre or Plea doe comprehend ſuch matter as doth acknowledge the felony; as a Releaſe or pardon. But if he doe pleade any ſuch Plea or Barre; *viz.* Releaſe, or Pardon in any Appeale

*Stamf.*98.*b.* 22.*Ed.*4.39.*b.*

peale or Enditement, he cannot plead ouer *Not guilty* to the Felony, becauſe thereby hee confeſſeth the Felony by implication.

If in a Præcipe, the Tenant ſay that hee is Leaſſe for life, and pray in ayde, the demaundant ſaith hee hath fee, which the Tenant denyeth not, and therefore he is owted of the ayde: If after he will ſay he is Tenant for tearme of life, and vouch, he ſhall not be thereunto receiued. 11. *Hen.* 4. 69. a. *Culpepper.*

Theſe Caſes with many other may bee comprehended vnder the generalitie of the laſt ſpecified Rule, & are one in Reaſon, not vnder one immediate Reaſon, but vnder this Reaſon, *viz. Home ne ſera admitt a Contradize ceo q̄ il ad conſes de Recorde.*

Moreouer there is another Caſe, one in effect of Reaſon, with the former propoſed Caſe, which becauſe it is neuertheleſſe, in circumſtance more generall, therefore it cannot be comprehended vnder the laſt ſpecified Rule, as namely.

If a man bee indicted of Trauers, and thereupon be found guiltie by verdict at the ſuite of the king; If after, the party againſt whom the Trauers was committed, bring action for the ſame Trauers; the other ſhall not pleade *Not guiltie* thereunto. 7. *Hen.* 4. 35. *b.*

In the former Grounds, and Caſes thereupon, the partie was concluded by an implyed confeſſion; but in this laſt Caſe, he is conuinced by an open tryall or verdict. And whoſoeuer will comprehend both this and the former caſes vnder one Ground or Rule, muſt make the ſame more generall then the former, in this manner.

Home ne ſera permit a denier tiel offence de que

il poit eſte convince per matter de Record.

And foraſmuch as a man may be conuinced of an offence as well by confeſſion, as by verdict; and that as well, by implicature confeſſion, as by expreſſe confeſſion: Therefore euery of the ſaid former Caſes may be concluded and comprehended vnder the ampleneſſe of this laſt remembred Ground.

A ſpeciall Ground may bee reduced vnto a Rule or Propoſition generall, by ſeeking the Genus or generall Notion of euery Titling word found in the ſaid ſpeciall Ground, As for example, the ſaid Propoſition before remembred, and which hath beene exemplified with Caſes, was this.

Home ne ſera permit a denier ceo q. devant il ad Confeſs per implication de Record.

Vpon the word (*denier*) it may be drawne more generall, thus.

Home ne ſera permit de Contrary ſon act demeſne que deuant il ad conuz.

A more generall Reaſon whereof may againe bee yeelded, thus.

Seroit inconuenient que le ley alloweroit a dize, et a dedize vne meſme choſe de Record.

Vpon the word (*Confeſſion*) theſe Reaſons alſo may be aſſigned more generall then that firſt ground.

Confeſſion de vn eſt le plus pregnant proofe que poit eſte encounter luy.

A reaſon hereof: For, *Le Confeſſion de chacun que concerne luy meſme ſera intend vray.* For,

Nul conuoit le offence melious que ceſty que ad ceo comit et perpetrat.

Vpon the word (*Implication*) theſe generall Rules may be propoſed. *Con-*

Confeßion per Implication eſt cy fort encounter le Party come Confeßion experſſ. For,

Pregnant Implication eſt equiualent al matter expreſſ.

Vpon the word *(Record)* ſomewhat likewiſe may be ſaid of like effect; *viz.* thus;

Matter de Record que eſt grounded ſur le act del Party meſme luy iſſint liera que il ne contra dira ceo apres. For,

Le credit d'vn Iudicial act ne ſera impeach per aſcun que eſt privy a ceo. For,

Matter de Record eſt plus hault teſtimony in ley.

Vnder the word (*Fine*) there was mentioned this Ground or Rule.

Fine que eſt fait pur vn offence proue home culpable del offence.

Here hence theſe Propoſitions being more generall, may be deriued.

Nul per Common preſumption voit faire voluntarie fine pur le offence de quel il neſt Culpable.

A reaſon whereof may be thus.

Pœna culpam implicat. And *Le Conſequent importa ſon Principal.*

Hereof you ſee what abundance of Rules and Propoſitions one Caſe containeth; and that we may deſcend from the particular caſe, to the ſpeciall Reaſon, from that to a more generall, vntill we finde out the very primarie ground of naturall Reaſon, from whence all the other are deriued.

Herein this Caution is to bee conſidered and had in minde, that in collection of Grounds and Principles out of any propoſed Caſe, the ſame may bee Natiue,

Natiue, and alwaies appliable and reduceable to the immediate Reason of the said Case, so that in any occasion of Argument, the same Case may be a pregnant and efficient proofe thereunto.

Furthermore collection of Propositions may bee drawne and reduced from all the principall places of Logicall Inuention.

1 As from the Causes vnto the Effect.

2 And contrariwise from the Effects vnto their Causes.

3 So likewise from the Consequent vnto the Antecedent.

4 And from the Antecedent to the Consequent.

5 Moreouer a *Pari*, as from the Equall or Like

6 *A maiori* from the more likely vnto that which is lesse probable.

7 And againe, from that which is lesse Likely or Probable to that which is more Probable.

8 Finally, from the Contrary to his Contrarie: sith that *Eadem est ratio & propertio Contrariorum.*

Notes of Authors touching the obseruation of Collection of Grounds & Rules by Inference.

THe Reasons and Causes wherefore these Propositions, Rules, and Axioms (as hath beene declared first in manner as aforesaid) are not onely to be considered, obserued and collected, but alway to be had, and carefully to be kept in memorie; And the *end* and *scope* whereto they serue and tend, will manifestly appeare, as well by the Obseruation

of

of the right vſe of them, and the manifold vtilitie and great helpe, which riſeth by the daily meditation therein, as likewiſe by the conſideration and amendment of ſome inconſiderate abuſes which haue crept into the daily handling of them, both in iudiciall places abroad, and in priuate exerciſes at home.

The neceſſary vſe of them therefore conſiſteth in two parts.

1 The one ſeruing to the obtaining of the knowledge of the Law.

2 The other in vſe and practiſe of the Law learned by theſe Propoſitions and Rules, reducing them, as occaſion ſerueth to publique and priuate behoofe.

The firſt is Speculatiue.

This laſt Practique.

As touching the firſt, the profit hence ſpringing may ſoone be ſeene and diſcouered, if we call to our memorie, that no manner facultie whatſoeuer to bee learned by the the light of Reaſon, can conſiſt or be comprehended by the capacitie of mans vnderſtanſting, except (as before alſo in part hath appeared) it be furniſhed with certaine Aſſertions, Precepts, Rules, and Propoſitions, and the ſame adorned with theſe two qualities, *Vniuerſalitie* and *Veritie*. And as none may worthily take vpon him the name of a Diuine, which is ignorant of the Principles of his Science; nor any man may well arrogate the title or name of a Philoſopher or Phyſitian, who knoweth not the ſeuerall Rules, whereupon, as vpon ſundry foundations, the ſaid ſeuerall faculties are built and erected; ſo none may bee deemed a Lawyer, or admitted, or can giue good Aduiſe therein, which

knoweth not the Precepts whereon his Art dependeth; or hath not read the determination of former doubts left reported in bookes, being the greateſt part of the written Law in this Land; And thence, not collected Concluſions for the deciſions of preſent and future controuerſies.

Moreouer ſeeing the Law of this Land is wholly Rationall (as hath beene ſaid) wherein, as in all other Sciences, the minde of man holdeth and keepeth the former publiſhed proceeding, by apprehenſion and diſcourſe, collecting Primarie aud Secondary Concluſions and Grounds, it cannot bee otherwiſe, but that the obſeruation of theſe Primarie and Secondarie Concluſions, muſt needs bee the beſt, moſt approued, profitable and ſpeedie meane, for the attaining of the right, ſound, and infallible knowledge of the ſaid Lawes.

And if there be any way extant, or to be found by mans wiſedome, to purge the Engliſh Lawes, from the great Confuſions, tedious and ſuperfluous iterations, with the which the Reports are infeſted; or quit it of theſe manifold contrarieties, wherewith it is ſo greatly ouercharged, ſo that the Coherencie, conſtancie, and conformitie thereof, is almoſt vtterly loſt, and not without ſome blemiſh and reproach of our Nation and Common-wealth, in manner cleane aboliſhed; Surely, as to mee ſeemeth, there is likelihood by that way and meanes to bring the ſame to paſſe, or by none. For, by Rules and Exceptions, all Sciences are and haue beene publiſhed, put downe and deliuered: out of Rules and Exceptions, a method is framed, by which meanes men may view a perfect

perfect plot of the coherence of things: Euen as in a large ſpred tree, from the loweſt roote to the higheſt branche; from the moſt ample and higheſt Generall, by many degrees of diſcent, as in a Petigree or Genealogie, to the loweſt ſpeciall and particular; which are combined together as it were in a conſanguinitie of bloud and concordancy of nature.

And yet therewithall peruſing the particular differences and degrees of diſtinction betweene them, in all the courſe of humane ſtudies, there is none that doth more commend vnto our cogitations the wonderfull force of mans wiſedome, then doth this diſcourſe which treateth of the Principles, Grounds, Rules, and Originals of Law and Iuſtice, being the chiefe fyne of humane ſocietie, without the which it cannot conſiſt; and which, beſides the exceeding pleaſure that the conſideration thereof breedeth in the well affected minde, is able to bring vs ſpeedily to ripeneſſe and maturitie in that profeſſion. For, *Principium eſt dimidium totius*, ſaith *Ariſtotle*.

Short refined reaſons of long perplexed Caſes, doe, through their ſoundneſſe, ſatisfie our iudgements, through their breuity and ſhortneſſe, wonderfully delight the minde, through their pithineſſe, they may be deemed incomparable treaſures, yeelding a great ſhew of wit, and wonderfully ſharpening our vnderſtanding, of infinite vſe, in all humane affaires, containing much worth in few words, no burthen to memorie, but once obtained, are euer retained.

Sith all Sciences doe tend to Veritie (as hath beene before often affirmed, which is the obiect of the in-

tellectuall part of our minde ; And ſith Verity and Truth cannot be obtained or found without due knowledge of the cauſes ; *Tunc enim* (as ſaith the Philoſopher) *unumquodque ſcire arbitramur, cum eius cauſas & Principia cognoſcimus.* And not vnfitly ſaid the Poet,

Fælix qui potuit rerum cognoſcere cauſas.

Then muſt the right and due obſeruation of theſe and ſuch like Principles containing the Cauſes of things, be a direction to conduct and leade vs to the knowledge of that faculty and ſcience, whereof they are Principles. For from hence all artificiall Demonſtrations are, and haue beene drawne and deduced.

To adhere therefore and wholly to reſpect particular caſes, without any obſervation of the generall Rules and Reaſons, and to charge the memory with infinite ſingularities, is vtterly to confound the ſame; a labour of vnſpeakable toyle, and wherein we ſhall neuer free vs from confuſion ; but engender in our ſelues, that wrong opinion which many haue (amiſſe) entertained, that there is nothing certaine in our Lawes.

Finally, if the Law be euery mans inheritance borne vnder the ſame, as notably (beſides our owne Lawes) ſaith the Prince of Oratours, *Tully : Maior hæreditas venit unicuique noſtrum à iure et legibus, quàm ab ijs à quibus illa bona relicta ſunt. Nam ut perveniat ad nos fundus, teſtamento alicuius fieri poteſt : ut retineamus quod noſtrum factum eſt, ſine iure civili fieri non poteſt.* And all mens inheritance ſhould be certaine both for the priuate repoſe of the people

M. T. Cicero pro Cecinna.

people,and publique good and quiet of the Common wealth. Wee muſt needs thinke the Law of this Land full of defect, except we thinke and deeme it to be (as indeed it is) certaine.

Who then can,without the conſideration of theſe vniuerſall Maximes, Propoſitions, Rules, and Principles, wherein certainty is alone conteined, attaine vnto the certaine knowledge thereof ? for as it hath beene truly publiſhed ; *Principiorum eſt unumquodque ſibi ipſi fides* ; Inſomuch that *cum negantibus ea, non eſt diſputandum*. 10. *Eliz*. 271. *a*. *Dyer*, 26.

Hitherto hath beene ſpoken what profit the carefull conſideration aud obſeruation of Principles, Rules,and Maximes of the Law of this Realme doth giue vs, and what aſſiſtance we may finde therein toward the ſtudy and ſpeculation of the ſame. It reſteth therefore now,that ſomewhat be ſaid of the commodity which may come to him, that ſhall mannage and practiſe the ſame Lawes, and to what vſe this obſeruation therein likewiſe ſerueth.

Two kindes of Arguments are noted by *Morgan*.

Il y ſont deux principall choſes ſur que poient eſte fait S. noſtre Maximes, & reaſon, la Mere de touts Leyes &c. Arguments Com Colthurſt. I thinke by the later of theſe,the vſe of Argumentation vpon reaſons drawne from the Logicall places of invention, are to bee vnderſtood ; As namely to argue and reaſon in caſes of debate, from the cauſes, effects, parts, conſequents, miſchiefes,and inconueniences and ſuch like ; which aptly may be called naturall reaſon, becauſe all Art therein obſerued, is but the imitation of nature : which kinde or courſe of Argument, is much vſed

in ancient bookes, when as there were feweſt bookes of reports extant.

But by the former of theſe two ſpecified kindes of Arguments, is meant as manifeſtly appeareth, the helpe, Grounds, and Maximes doe yeeld in that kinde. For the vnderſtanding therefore of the right vſe thereof, it behoooeth to conſider, that the ſame wholly doth conſiſt in the apt and convenient application of the ſaid Rules, vnto ſuch particular caſes daily falling in debate, as may be comprehended vnder the generallity of the ſame Rules, and may in euery reſpect be rightly reduced thereunto; ſo that the Rule might ſerue as a well-grounded reaſon of the matter called in queſtion.

To this effect the Author of the Dialogues betweene the Doctor and Student, after hee had at large ſpoken of the credit and ſuppoſed certainty of a Principle or Maxime of the Lawes of this Land, addeth further that ſuch Maximes be not onely holden for Law, but alſo other caſes like vnto them, and all things, that neceſſarily follow vpon the ſame, are to be reduced to the like Law.

A ſecond vſe of the obſeruation of Principles in Argumentation may be this.

Wee are taught (as ſaith *Ariſtotle*) and as likewiſe hath afore beene remembred, by the election of Principles to abound in matter fit for Argumentation. Our propoſitions may be framed as parts of Syllogiſme, or as antecedent Propoſitions of Enthymemes, by which forme of Arguments, this profit and commodity is reaped, that he which rightly uſeth the ſame, in proofe or diſproofe of any propoſed

matter

matter ſhall not need to fall into any unneceſſary and extravagant matter, or digreſſe from the point that he hath in hand. For if the parts of our argument ſo to be concluded, doe conſiſt of Propoſitions which are Principles in Law, and be in due and expedient manner framed and combined together, the Concluſion, which is the point in queſtion, will follow, either neceſſarily or probably, according to the truth of the ſaid Propoſitions, for as we haue before ſhewed, that by reducing a caſe to a Syllogiſme, we might finde ſome of the principall Reaſons and Propoſitions, whereuponthe verity of the ſaid caſe, being the concluſion, dependeth; as trying out the cauſe by the effect: So of the contrary part, to frame the effect by the cauſe; the ſame Propoſitions will, as they confirme one caſe, ſo likewiſe eſtabliſh all other ſpeciall caſes, which ſhall happen to concurre in equall and like reaſon, or be reducible to, or vnder, the generallity of the ſaid Propoſition.

And although the Lawyer be not tyed to this ſhort courſe of Argument current in ſchooles, yet in whatſoeuer large diſcourſe of Argument, if this forme be reſpected, though amplified and enlarged with Proſyllogiſmes, after the manner of Rhetoritians or Oratours, it will yeeld the fruit afore remembred. There are in our books extant of both, as namely, by *Conisby*, to prooue that a man might grant his leaſe for yeares without Deed, vſeth this plaine and expreſſe Syllogiſme; whereof euery Propoſition being a Ground and Principle in the Law, the concluſion neceſſarily doth follow. 14 *Hen.7.3.b.*

1 *Maior*) *Choſe que ieo poy prender in leaſe ſans fait*

fait poiet paſſer hors de moy ſans fait.

2 *Minor*) *Et un leaſe de terre pur terme d'annis eſt bon ſans fait.*

3 *Concluſio*) *Ergo per meſme le reaſon il poit paſſer hors del Leſſee, & ceo ſans fait.*

20 *Hen.7.13.b.* Likewiſe a queſtion grew whether the heire or executor were to haue a furnace fixed vnto the ſoyle, or ſuch chattells as were annexed to the freehold after the death of the Teſtator, or no; where the Reporter putteth downe the opinion of *Reede* chiefe Iuſtice, *Fiſher*, and *Kingſmill*, that the executors ſhould not haue the ſame vnder the frame of this forme of Syllogiſme; whereof euery Propoſition is a Rule of Law.

1 *Maior*) *Ceux choſes que ne poient eſte forfeit per vtlary in perſonall action, ne eſte attache in Aſſiſe ne diſtraine per le ſignor pur Rent, tiels choſes executours naveront.*

2 *Minor*) *Mes un furnace ou table fix ſur la terre, ou poſſes, ou un pale, ou un couering de un lict meriſme, ou bord annex al franktenant, ou houſe & feneſters, & auters tiels ſemblables queux ſont annex al franktenement, & ſont fait, pur un profit del inheritance, ne poient eſte forfeit per utlary, ne attache, ne diſtraine.*

3 *Concluſio*) *Ex conſequenti ſequitur que executours naveront tiels choſes.*

As touching the ſecond ſort of Argument by Syllogiſme, in the Commentaries of *Plowden* the ſame is very frequent and uſuall. And herein to take example out of the firſt caſe, becauſe it firſt commeth to memory, All the ſaid Argument of *Griffith* in the

caſe

caſe of *Foggoſa*, may be reduced into this Syllogiſme ſet forth in the entrance thereof.

Maior) *Chaſcun agreement covient eſte perfect, plein & compleite.*

Minor) *Et le evidence icy ne prone le agreement deſte perfect, ne plain, ne compleite, mes plus toſt un Comunication ou parlance que un agreement.*

The concluſion is ſuppreſſed for that it apparently followeth of the premiſes, vntill the end of the argument; where at laſt it is expreſſed in this manner.

Concluſio) *Et iſſint le agreement eſt imperfect a doner action pur le ſubſedy per que le agreement intend per le ſtatute neſt accomply.*

The Maior Propoſition is amplified with this Proſyllogiſme.

Car agreement concernant perſonall choſes, eſt un mutuall aſſent des parties, & doit eſte execute oue un recompence, ou autrement doit eſte cy certaine & ſufficient que doit doner action, ou auter remedy pur recompence, & ſil iſſent neſt, donque ne ſera dit agreement mes plus toſt un nude communication.

And this Propoſition he prooueth by the caſes thereafter by him alleaged.

The Minor Propoſition of the firſt Syllogiſme is there enlarged where he further addeth.

Et iſſint in noſtre caſe entant que eſtatute de an. 1. Regis nunc, cap. 3. &c. vntill the end of the caſe.

The like may be obſerued in euery good and effectuall argument; but we ſtand not vpon example.

A third profit may be conſidered herein: for many times it falleth out, that we perceiue a coherence and likeneſſe betweene diuers and ſundry caſes,

which therefore wee know are applyable to our purpoſe; and yet neuertheleſſe, except we draw the vnity of reaſon ſo found and conſidered in the ſaid caſes, vnto a ſhort ſentence, Ground, Rule, or Propoſition, wherein they may concurre, and do agree; we ſhall be driuen with long circumlocution and many words, to make manifeſt our meaning in the allegation of the ſame, eſpecially if the caſes do not concurre and agree in one mediate reaſon or likeneſſe, but are vpon ſome conformity further off, to be reſembled each to other. As for example.

1.Hen.7.4.b. *Le Roy ne poit arreſt un home de ſuſpition de treaſon ou felony, luy meſme, come un ſubiect poit faire, pur ceo que ſi il fait tort in ceo feaſant, le party iſſint iniury ne poit auer action envers luy.*

49.Ed.3.5.a. 50 Aſſiſ.p.1. 9.Eliz.262. *Si home ſoit in debt a un ſur contract ſans ſpecialty; ſi apres ceſty a que le dit eſt due ſoit vtlaye in action perſonall, le Roy naver ceſt dett pur l'utlary a luy forfeit, pur ceo que donq̃ le defendant perderoit le benefit del ley gager que il poit aver in ſute de ceo comence vers luy per le Creditour.*

25.Ed.3.48.a.b. Com.Walſingh. *Coment que leſtatute de W. 2.cap.3. done reſceit a ceſty in le revercion generalment uncore ſi le Tenant pur vie ſoit, ou le Roy ad le revercion; & il eſtant impledo ſuit default a pres default, le Roy ne ſera receiue come common perſon ſeroit. Car, ſur le reſceit, le demandant doit counter vers ceſty que eſt receiue, Mes iſſent ne poit aſcun counter vers le Roy, ne luy ſuer, mes per petition; Et pur ceo, ſi le Roy ſeroit reſceiue le breve, le demandant abateroit maintenant, et pur ceſt miſchiefe, al demandant le Roy ne ſera reſceiue: mes ſon droit ſera ſabe per auter meane.*

Theſe

Theſe three caſes greatly doe differ both in the circumſtance of matter, & in the immediate reaſons, and yet neuertheleſſe haue ſome reſemblance, and a kinde of conformitie and likeneſſe, betweene them each to other.

1 Firſt they all concerne the King.

2 Secondly the King in euery of them is reſtrained from that power or benefit that his ſubiect hath. For

1 In the firſt, he cannot arreſt one as his ſubiect may.

2 In the ſecond he ſhall loſe that debt which his ſubiect, in whoſe right hee claimeth it, ſhoud recouer.

3 In the third he ſhall not be receiued where the ſubiect might.

And laſtly in euery of theſe caſes, if the King ſhould bee admitted to doe as a common perſon might, the ſubiect in ſuite with him ſhould ſuſtaine great preiudice. For

1 In the firſt he ſhould not be permitted to puniſh the iniury done to his perſon.

2 In the ſecond he ſhould loſe the benefit of waging his Law. And

3 In the third and laſt haue his Action debated without his default.

The likeneſſe of which caſes cannot ſo well bee conceiued without many words, except wee reduce vnto ſome generall Axiome the vnity and reſemblance of reaſon found in them. And therefore this Propoſition without more might haue ſufficed for all.

Where the ſubiect by reaſon of ſome Prerogatiue that is in the King, ſhould otherwiſe be put to a preiudice; there the king ſhall not be allowed that benefit which euery of his ſubiects by law enioyeth.

In which generall Axiome or Rule, a generall reaſon of all the ſaid ſeuerall Caſes doth equally concur.

4 By this obſeruation wee may reape likewiſe a fourth commoditie, after this manner. All the Reports doe conſiſt of particular Caſes Euery particular Caſe hath his ſeuerall Circumſtances. Circumſtances are ſingular, and hardly retained in memorie. For, true is that ſentence, which *Bracton* hath borrowed out of the Ciuill Law, *Omnia habere in memoria, et in nullo errare, diuinum eſt potius quam humanum.* Wherefore when the Caſe is out of memorie, and the circumſtances thereof quite forgot, the Reaſon yet remaineth, and is had in memorie. For, *Memoria Intellectiua eſt vniuerſalium, vt eſt ipſemet Intellectus.*

Bracton li. 1. cap. 1. ¶. 3.

It is not the Caſe ruled this way, nor that way, but the reaſon which maketh Law; For, *Non quid ſit intelligere ſufficiat, ſed curſit diligentius inquiratur.* So that hee which by obſeruation of theſe Grounds and Principles, remembreth but the reaſon (as he eaſily may) ſhall ſo ſufficiently reſolue all doubts of like degree, as if hee had remembred the expreſſe Caſes from which the ſame Reaſon is deduced. Although in argument, I confeſſe not onely the Generall Reaſons, but likewiſe the ſpeciall Caſes are as proofes produced and alleadged.

Math. Gribaldus de ratione ſtudij Iuris lib. 1. cap. 4.

5 Laſtly, ſith the choſen and collected Propoſitions and Principles in manner as aforeſaid, for our better

vſe

vse behooueth to be committed to writing, we may easily without great trouble, by disposing of them orderly, frame a Directory, in manner either of a methodicall Treatise, or of an Alphabeticall Table, fit and conuenient both for the speedie finding of that wee would seeke, and the ready hauing of that we can wish for, surpassing the benefit of any Abridgement heretofore extant.

And thus much touching the commodities growing by the consideration and collection of Principles, Rules, Axiomes, Grounds, and Maximes: and of the scope and end whereunto they tend in managing of our Lawes, as well for the behoofe of the Student, and for the vse of the Practiser. And now remaineth that a few words be said to forewarne both, of certaine abuses ordinarily bred herein.

1 The first Abuse is, that neither the Ground often times produced doth come neere the Reason of the Case, in question; nor the Cases alleadged to proue and fortifie that Ground, doe directly confirme the same. A fault very vsuall in publique exercises; and may be redressed if we doe call to minde that any Case alleadged ought not to be wrested to proue the Rule or Ground alleadged; but the Rule, Ground, or Principle ought to be the very immediate or secondarie reason of the Cases whence it is drawne, and which Cases are brought to confirme the same, in such sort that all the Cases alleadged doe concurre in equalitie of reason, likenesse, and proportion; and in full proofe of the Principle so produced. And that the Ground or Principle bee a reason of the question in variance, to subuert or confirme the

ſame. Wherein alſo let this be weighed, that a few Principles cannot ſufficiently ſerue to ſupplie all occaſions in that behalfe, but the ſame muſt be drawne and deduced of all Cauſes, Titles, and matters in the Law fit for argument and vſe.

2 A ſecond principall ouerſight is this. Many to proue their opinion in the controuerſie propoſed, frame their reaſon rightly from ſome notable Ground, and knowne Principle or Rule, which though it bee well applyed, yet not regarding the manifo'd Exceptions whereunto the ſame Principle is ſubiect, they doe ſet it forth ſo generall, that it giueth their aduerſarie ſome cauſe of challenge and cauill thereunto, by obiecting ſome inſtance or caſes vpon exception of the ſaid Rule: and thereby doth not onely ſeeme to enfeeble the ſame, in ſhewing the fallacies thereof; but ſometime in ſhew, weakeneth the whole reaſon and argument grounded thereupon.

3 The third abuſe of theſe Principles or Propoſitions, is, in the two much frequenting and often needleſſe vſe of them. For ſometimes the obſcuritie of the Cauſe, may require ſome other manner of argument, drawne from places of inuention, which may content and ſatisfie the minde of the hearers much better. And ſometimes the cleareneſſe of the matter it ſelfe, needeth not ſuch preparation of proofe and confirmation of thoſe Principles and Rules. For then is the moſt and beſt of them, when that both Propoſitions and Caſes to confirme the ſame, haue great coherence with the queſtion; when both the circumſtance of the Caſe in queſtion, and the cauſe of

of doubt, doe giue occaſion to vſe them; ſo that which thereby is affirmed, may rightly be reducible to the purpoſe.

4 Finally, it ſometimes falleth out to be a fault ouermuch to abound in well doing. *Omne Nimium vertitur in vitium*, ſaith the Prouerbe; for ſundry times it happeneth, that it is very conuenient and direct to the matter to make argument vpon a well applyed Prnciple, Rule or Ground, which by men of great learning and reading is ſometimes ſo ſufficiently handled, with ſuch abundance and ample furniture of notable and direct Caſes, that their endeauour herein deſerueth high commendations: yet more conuenient were it, that their paines were leſſe. For to what purpoſe behoooueth it, to heape Caſe vpon Caſe, as it were one on the necke of another, *Pelion* vpon *Oſſa*? Whereas many probable reaſons, though confirmed with few good Caſes, breede greater contentation to the hearer, by reaſon of the ſeuerall proofe made thereby then many Caſes.

FINIS.

THE VSE OF THE LAW.

Provided for Preſervation

OF

Our { *Perſons.* / *Goods, and* / *Good Names.* }

According to the Practiſe

OF

The { *Lawes* / *and* / *Cuſtomes* } *of this Land.*

LONDON.
Printed for BEN: FISHER, and are to bee ſold at his Shop without *Alderſgate*, at the Signe of the *Talbot*. 1629.

A Table of the Contents of this enſuing Treatiſe.

Recogni-

THE

THE VSE OF THE LAW,

And wherein it Principally Conſiſteth.

THE Vſe of the Law, conſiſteth principally in thoſe Three things:

1. To ſecure Mens perſons from Death and Violence.
2. To diſpoſe the propertie of Goods and Lands.
3. For preſervation of their good Names from ſhame and Infamie.

FOr ſafetie of perſons, the Law provideth, that any man ſtanding in feare of another, may take his Oath before a

☞ *Suretie to keepe the Peace.*

Iuſtice of Peace, that he ſtandeth in feare of his life, and the Iuſtice ſhall compell the other to bee bound with Sueties to keepe the Peace.

☞ *Action of the Caſe, for Slaunder, Batterie, &c.*

If any man Beate, wound or maime another, or giue falſe ſcandalous words that may touch his Credit, the Law giveth thereupon an action of the Caſe, for the ſlaunder of his good name; and an Action of Batterie, or an appeale of Maime, by which recompence ſhall bee recovered, to the value of the hurt, dammage or danger.

☞ *Appeale of Murther giuen to the next of kinne.*

If any man kill another with malice, the Law giveth an appeale to the wife of the dead, if hee had any, or to the next of kinne that is Heire in default of a Wife, by which appeale the Defendant conuicted is to ſuffer Death, and to looſe all his Lands and Goods; But if the Wife or Heire will not ſue or bee compounded withall, yet the King is to puniſh the offence by Indictment or Preſentment of a lawfull inqueſt and tryall of the Offenders before competent Iudges; whereupon being found guiltie, hee is to ſuffer Death, and to looſe his lands and goods.

If one kill another vpon a ſuddaine quarrell, this is Man-ſlaughter, for which the Offender muſt dye, except hee can reade; and if hee can reade, yet muſt he looſe his goods, but no lands.

☞ *Manſlaughter, and when a forfeiture of Goods, and when not.*

And if a man kill another in his owne defence, hee ſhall not looſe his Life, nor his Lands, but he muſt looſe his Goods; except the partie ſlaine did firſt aſſault him, to kill, robbe, or trouble him by the High-way ſide, or in his owne Houſe, and then he ſhall looſe nothing.

And if a man kill him-ſelfe, all his Goods and Chattels are forfeited, but no Lands.

☞ *Felon: de Se.*

If a man kill another by misfortune, as ſhooting an Arrow at a Butt or marke, or caſting a Stone ouer an houſe or the like, this is loſſe of his goods and Chattels, but not of his lands, nor life.

☞ *Felony by miſchance.*

If a Horſe, or Cart, or a Beaſt, or any other thing doe kill a man, the Horſe, Beaſt or other thing is forfeited to the Crowne, and is called a *Deodand*, and vſually graunted and allowed by the King to the Biſhop Almner, as goods are of thoſe that kill themſelues.

☞ *Deodand.*

☞ *Cutting out of Tongues and putting out of Eyes, made Felonie.*

The Cutting out of a mans Tongue, or putting out his Eyes maliciously, is Felonie; for which the offender is to suffer Death, and loose his lands and goods.

But, for that all Punishment is for Examples sake. It is good to see the meanes whereby Offenders are drawne to their punishment; and first for matter of the Peace.

THe auntient Lawes of England planted heere by the Conquerour, were, that there should bee Officers of two sorts in all the parts of this Realme to preserue the Peace:

1. *Constabularij*
2. *Conservatores*

} *Pacis.*

☞ *The Office of the Constable.*

The Office of the Constable was, to arest the parties that he had seene breaking the Peace, or in furie ready to breake the peace, or was truely informed by others, or by their owne confession, that they had freshly broken the peace; which persons hee might imprison in the Stockes, or

or in his owne houſe, as his or their quality required, vntill they had become bounden with ſureties to keepe the peace; which obligation from thenceforth, was to bee ſealed and deliuered to the Conſtable to the vſe of the King. And that the Conſtable was to ſend to the Kings Exchequer or Chancery, from whence Proceſſe ſhould bee awarded to leauy the debt, if the peace were broken.

But the Conſtable could not arreſt any, nor make any put in Bond vpon complaint of threatning onely; except they had ſeene them breaking the peace, or had come freſhly after the peace was broken. Alſo, theſe Conſtables ſhould keepe watch about the Towne, for the apprehenſion of Rogues and Vagabonds, and Night-walkers, and Eueſdroppers, Scouts and ſuch like, and ſuch as goe Armed. And they ought likewiſe, to raiſe hue and cry againſt Murtherers, Manſlayers, Theeues and Rogues.

First, High Conſtables. 2ly, Pettie Conſtables.

Of this Office of Conſtable there were high Conſtables, two of euery Hundred; Pettie Conſtables one in euery Village, they were in auncient time all appointed by

☞ 2. *High Conſtables for euery hundred.*

1. *Pettie Conſtable for euery village.*

the Sheriffe of the Shiere yearely in his Court called the Sheriffes Tourne, and there they receiued their oath. But at this day they are appointed eyther in the Law day of that Precinct wherein they ſerue, by the high Conſtable; or in the Seſſions of the peace.

The Kings Bench firſt inſtituted, and in what matters they anciently had Iuriſdiction in.

The Sheriffes Tourne is a Court very ancient, incident to his Office. At the firſt, it was erected by the Conquerour, and called the Kings-Bench, appointing men ſtudied in the Knowledge of the Lawes to execute Iuſtice as ſubſtitutes, to him in his name, which men are to bee named, *Iuſticiarij ad placita coram Rege aſſignati.* One of them being *Capitalis Iuſticiarius* called to his fellowes, the reſt in number as pleaſeth the King, of late but three, *Iuſticiarij* holden by Patent. In this Court euery man aboue twelue yeares of age, was to take his Oath of Allegiance to the King, if hee were bound, then his Lord to anſwere for him. In this Court the Conſtables were appointed & ſworne; breakers of the peace puniſhed by fine and impriſonment, the parties beaten or hurt recompenced vpon complaints of damages, All appeales of Murther, Maime, Robberie decided, contempts againſt the Crowne, publique annoyances

noyances againſt the people, Treaſons and Felonies and all other matters of wrong, betwixt partie and partie for Lands and goods.

But the King ſeeing the Realme grow daily more and more populous, and that this owne Court could not diſpatch all: did firſt ordaine that his Marſhall ſhould keepe a Court, for Controuerſies ariſing within the *Virge*. Which is within xij. miles of the chiefeſt Tunnell of the Court, which did but eaſe the Kings Bench in matters onely concerning debts, Conenants and ſuch like, of thoſe of the Kings houſhold onely, neuer dealing in breaches of the Peace, or concerning the Crowne by any other perſons, or any pleas of Lands. Inſomuch, as the King for further eaſe hauing diuided this Kingdome into Counties, and committing the Charge of euery Countie to a Lord or Earle; did direct, that thoſe Earles within their limits ſhould looke to the matter of the peace, and take charge of the Conſtables, and reforme publike annoyances, and ſweare the people to the Crowne, and take pledges of the Freemen for their Allegiance, for which purpoſe the Countie did once euery yeare keepe a Court, called the Sheriffes Tourne. At which all the

☞ *Court of Marſhalſee erected, and its Juriſdiction within 12. miles of the chiefe Tunnel of the King, which is the full extent of the Virge.*

Sheriffes Tourne inſtituted vpon the diuiſion of England into Counties, the charge of this Court was committed to the Earle of the ſame Countie, this was likewiſe called Curia Viſus fra. pleg.

the Countie (except Women, Clergie, Children vnder 12. and not aged aboue 60.) did appeare to giue or renew their pledges for Allegiance. And the Court was called, *Curia Franci plegij*, A view of the pledges of Free-men; or, *Turnus Comitatus.*

☞ *Subdiuiſion of the Countie Court into Hundreds.*

At which meeting or Court, there fell by occaſion of great Aſſemblies much bloudſhed, ſcarcitie of Victuals, Mutinies and the like miſchiefes; which are incident to the Congregations of people, by which the King was moued to allow a ſubdiuiſion of euery Countie into Hundreds, and euery Hundred to haue a Court, whereunto the people of euery Hundred ſhould bee aſſembled twice a yeare for ſurueigh of Pledges, and vſe of that Iuſtice which was formerly executed in that grand Court for the Countie; and the Court or Earle appointed a Bayliffe vnder him to keep the hundred Court. But in the end, the Kings of this Realme found it neceſſarie to haue all execution of Iuſtice immediately for themſelues, by ſuch as were more bound then Earles to that ſeruice, and readily ſubiect to correction for their negligence or abuſe; and therefore, tooke to themſelues the appointing of a Sheriffe yearely in euery Countie

The charge of the Countie taken from the Earles, and committed yearely to ſuch perſons as it pleaſed the King.

Countie calling, them *Vicecomit.* and to them directed ſuch writs and precepts for executing Iuſtice in the Countie, as fell out needfull to haue beene diſpatched, committing to the Sheriffe *Cuſtodium Comitatus*; by which the Earles were ſpared of their toyles and labours, and that was layd vpon the Sheriffes. So as now, the Sheriffe doth all the Kings buſineſſe in the Countie, and that is now called, the Sheriffes Tourne; that is to ſay, hee is Iudge of this grand Court for the Countie, and alſo of all Hundred Courts not giuen away from the Crowne.

The Sheriffe is Iudge of all Hundred Courts not giuen away from the Crowne.

Hee hath another Court, called the Countie Court, belonging to his office, wherein men may ſue monethly for any debt or damages vnder 40l. and may haue writs for to repleuie their cattell diſtrained and impounded for others, and there try the cauſe of their diſtreſſe; and by a writ called *Iuſticies*, a man may ſue for any ſumme, and in this Court the Sheriffe by a writ, called an Exigent, doth proclaime men ſued in Courts aboue, to render their bodies, or elſe they be Out-lawed.

☞ *County Court kept monethly by the Sheriffe.*

This Sheriffe doth ſerue the Kings writs of Proceſſe, bee they Sommons, Attachments to compell men to anſwere to

☞ *The Office of the Sheriffe.*

the Law, and all writs of execution of the Law, according to Iudgements of Superiour Courts, for taking of Mens Goods, Lands, or Bodies as the cauſe requireth.

☞ *Hundred Courts to whom they were at firſt granted.*

The Hundred Courts, were moſt of them graunted to Religious Men, Noble men, others of great place. And alſo many men of good quality haue attained by chance, and ſome by vſage within Mannors of their owne liberty of keeping Law dayes, and to vſe their Iuſtice appertaining to a Law day.

☞ *Lord of the Hundred to appoint two High Conſtables.*

Whoſoeuer is Lord of the Hundred Court, is two appoint two high Conſtables of the Hundred, and alſo is to appoint in euery Village, a pettie Conſtable with a Tithingman to attend in his abſence, and to bee at his Commandement when he is preſent in all ſeruices of his office for his aſſiſtance.

There hath beene by vſe and Statute Law (beſides ſurueying of the Pledges of Free-men and giuing the oath of Allegiance, and making Conſtables, many addictions of powers and authoritiegiuen to the Stewards of leets and Lawdayes to be put in vre in their Courts; as for example,

they

may puniſh Inne-keepers, Bakers, Butchers, Poulterers, Fiſhmonger, and Tradeſmen of all ſorts, ſelling with vnder weights or meaſures or exceſſiue prizes, or things vnwholſome, or ill made in deceipt of the people. They may puniſh thoſe that doe ſtop ſtraiten or annoy the high wayes, or doe not according to the prouiſion enacted repaire or amend them, or diuert water courſes, or deſtroy frey of Fiſh, or vſe engines or nets to take Deere, Conies, Pheſants or Partridges, or build Pigion houſes; except hee bee Lord of the Manner, or Parſon of the Church. They may alſo take preſentment vpon Oath of the xij ſworne Iury before them; but they cannot try the Malefactors, onely they muſt by Indenture deliuer ouer thoſe preſentments of felonie to the Iudges, when they come their circuits into that Countie. All thoſe Courts before mentioned are in vſe, and exerciſed as Law at this day, concerning the Sheriffes Law dayes and leets, and the offices of High Conſtables, petty-Conſtables, and Tithingmen; howbeit, with ſome further addictions by Statute lawes, laying charge vpon them for taxation for poore, for Souldiers and the like, and dealing without corruption and the like.

Of what matters they enquire of in leets and Law dayes.

☞ *Conſeruators of the Peace called by the Kings Writ for terme of their liues, or at the Kings pleaſure.*

Conſervators of the Peace were in auntient times certaine, which were aſſigned by the King to ſee the Peace maintained, and they were called to the Office by the the Kings writs, to continue for terme of theyr liues, or at the Kings pleaſure.

☞ *Conſeruators of the Peace & what theyr Office was.*

For this Service, choiſe was made of the beſt men of calling in the Countie, and but few in the Shire. They might bind any man to keepe the Peace and to good behauiour, by Recognizance to the King with ſuerties, and they might by Warrant ſend for the partie, directing their warrant to the Sheriffe or Conſtable, as they pleaſe, to areſt the partie and bring him before them. This they vſed to doe, when complaint was made by any, that hee ſtood in feare of another, and ſo tooke his Oath; or elſe, where the Conſeruator himſelfe did without oath or complaint, ſee the diſpoſition of any man inclined to quarrell and breach of the Peace, or to misbehaue himſelfe in ſome out-ragious manner of force or fraud. There by his owne Diſcretion hee might ſend for ſuch a fellow, and make him find Suerties of the peace or of his good behauiour, as hee ſhould ſee cauſe; or elſe cõmit him to the Goale if hee refuſed.

The

The Iudges of eyther Bench in *Weſtminſter*, Barons of the Exchequer, Maſter of the Rolles, and Iuſtices in Eire and Aſſizes in their circuits, were all without writ Conſeruators of the Peace in all Shires of England, and continue to this day.

☞ *Conſeruators of the Peace by vertue of their Office.*

But now at this day, Conſeruators of the Peace are out of vſe; And in lieu of them, there are ordained Iuſtices of Peace, aſſigned by the Kings Cõmiſſions in euery Countie, which are moueable at the Kings pleaſure; but the power, of placing & diſplacing Iuſtices of the Peace, is by vſe Deligated from the King to the Chancellor.

☞ *Iuſtices of Peace ordained in lieu of Conſeruators. Power of placing and diſplacing Iuſtic. of Peace by vſe deligated frõ the K. to the Chancellor.*

That there ſhould be Iuſtices of Peace by Commiſſions, it was firſt enacted by a Statute made 1. *Ed.* 3. and their Authoritie augmented by many ſtatutes made ſince in euery Kings raigne.

They are appointed to keepe foure Seſſions euery yeare; That is, euery Quarter, one. Theſe Seſſions are a ſitting of the Iuſtices to diſpach the affaires of their Commiſſions. They haue power to heare and determine in their Seſſions, all Felonies, breaches of the Peace, Contempts and treſpaſſes, ſo farre as to fine the Offender to the Crowne, but not to award recompence to the partie grieued.

☞ *The power of the Iuſt. of Peace, to fine the Offenders to the Crowne, & not to recompence the partie grieued.*

Parle Statut. 17. R. 2. Cap. 10. & v *Dier* 65. b. Ils ount poiar d'inquier de murder car ce Felon.

☞ *Authority of the Iuſtices of the Peace, through whō runne all the Countie ſeruices vnto the Crowne.*

They are to ſuppreſſe Ryots, and Tumults, to reſtore Poſſeſſions forcibly taken away, to examine all Felons apprehended and brought before them; To ſee impotent poore people, or maimed Souldiers prouided for, according to the Lawes. And Rogues, Vagabonds, and Beggers puniſhed. They are both to Licence and ſuppreſſe Alehouſes, Badgers of Corne and Victuals, and to puniſh Fore-ſtallers, regrators, and engroſſers.

Through theſe in effect runne all the Countie ſeruices to the Crowne, as Taxations of Subſidies, Muſtring men, Arming them, and leauying Forces, that is done by a ſpeciall Commiſſion or Precept from the King. Any of theſe Iuſtices by Oath taken by a man that hee ſtandeth in

☞ *Beating, killing, burning of Houſes.*

feare that another man wil beat him, or kill him, or burne his Houſe, are to ſend for the partie by warrant of Attachment directed to the Sheriffe or Conſtable, and

Attachments for ſuretie of the Peace.

then to bind the partie with Suerties by Recognizance to the King, to keepe the peace, and alſo to appeare at the next Seſſions of the Peace; at which next Seſſions, when euery Iuſtice of Peace hath

Recognizance of the Peace deliuered by the Iuſtices at their Seſſions.

therein deliuered all their Recognizances ſo taken, then the parties are called and the cauſe of binding to the Peace examined

ned, and both parties beeing heard, the whole Bench is to determine as they ſee cauſe, either to continue the partie ſo bound, or elſe to diſcharge him.

☞ *Quarter Seſſions held by the Iuſtices of the Peace.*

The Iuſtices of Peace in their Seſſions are attended by the Conſtables & Bayliffes, of all Hundreds and liberties within the Countie, or by the Sheriffe or his Deputy, to bee employed as occaſion ſhall ſerue in executing the precepts and directions of the Court. They proceed in this ſort, The Sheriffe doth Sommon 24. Free-holders diſcreet men of the ſaid County, whereof ſome 16. are ſelected and ſworne, and haue their charge to ſerue as the Grand Iury; The partie indicted is to trauerſe the indictment or elſe to confeſſe it, and ſo ſubmit himſelfe to bee fined as the Court ſhall thinke meet (regard had to the offence) except the puniſhment be certainely appointed (as often it is) by ſpeciall Statutes.

The Iuſtices of Peace are many in euerie Countie, and to them are brought all Traitors Felons and other malefactors of any ſort vpon their firſt apprehenſion, and that Iuſtice to whom they are brought, examineth them, & heareth their accuſations, but iudgeth not vpon it; onely if hee find the ſuſpition but light, then hee taketh

keth bond with ſureties of the accuſed, to appeare either at the next Aſſizes, if it be a matter of Treaſon or Felonie; Or elſe at the quarter Seſſions, if it bee concerning Ryot or miſ-behauior or ſome other ſmall offence. And hee alſo bindeth to appeare then thoſe that giue teſtimonie and proſecute the accuſation, all the accuſers and witneſſes, and ſo ſetteth the partie at large. And at the Aſſizes or Seſſions (as the caſe falleth out) hee certifieth the Recognizances taken of the Accuſed, Accuſers, and Witneſſes; who being there are called, and appearing, the cauſe of the accuſed is dept into according to Law for his clearing.

The authoritie of Iuſtices of the Peace out of their Seſſions.

But if the partie accuſed, ſeeme vpon pregnant matter in the accuſation and to the Iuſtice to bee guilty, and the offence heinous, or the Offender taken with the manner, then the Iuſtice is to commit the partie by his warrant called a *Mittimus* to the Goaler of the common Goale of the Countie, there to remaine vntill the Aſſizes. And then the Iuſtice is to certifie his Accuſation, Examination, and Recognizance taken for the appearances and proſecution of the witneſſes, ſo as the Iudges may when they come readily proceed with him as the Law requireth.

The

The Iudges of the Assizes as they bee now become into the place of the antient Iustices in Eyre. The prime Kings after the Conquest vntill *H.* 3. time especially; and after the lesser men euen to *R.* 2. time, did execute the Iustice of the Realme; they began in this sort.

Iudges of Assize come in place of the ancient Iudges in Eyre about the time of R. 2.

The King not able to dispatch busines in his own person, erected the Court of Kings Bench, that not able to receiue al, nor meet to draw the people all to one place, there were ordained Counties, and the Sheriffes Tornes, Hundred Courts, and particular Leets, and Law-dayes, as before mentioned, which dealt onely with Crowne matters for the publique; but not the priuate titles of Lands or Goods, nor the tryall of grand offences of Treasons and Felonies, but all the Counties of the Realme were diuided into Six Circuits. And two learned men well read in the Lawes of the Realme, were assigned by the Kings Commission to euery Circuit, and to ride twice a yeare through those Shires for their tryall of priuate titles to Lands and goods, and all Treasons and Felonies, which the Countie Courts middle not in.

1. *Kings Bench.*
2. *Marshals Court*
3. *Countie Courts.*
4. *Sheriffes Torns.*
5. *Hundred Leets and Lawdayes. All which dealt onely in Crowne matters, but the Iustice in Eyre dealt in priuat titles of lands or goods, and in all Treasons and Felonies, of whom there were 12. in number, the whole Realme, being diuided into six Circuits.*

England diuided into six Circuits, and two learned men in the Lawes, assigned by the Kings Commission to ride twice a yeare through those Shires for their tryall of priuate titles to Lands and goods, and all Treasons and Felonies, which the Countie Courts middle not in.

The authoritie of Tournes, leets, Hundreds, and Law-dayes, as it was confirmed to some special causes touching the publike good.

thoſe ſhires allotted to that Circuit, making Proclamation before hand, a conuenient time in euery Countie, of the time of their comming, and place of their ſitting, to the end the people might attend them in euery Countie of that Circuit.

They were to ſtay 3. or 4. dayes in euery Countie, and in that time all the cauſes of that Countie were brought before them by the parties grieued, and all the Priſoners of the ſaid Goale in euery Shire, and whatſoeuer controuerſies ariſing concerning Life, Lands or Goods.

☞ *The authority tranſlated by Parliament to Iuſtices of Aſſize.*

The authoritie of theſe Iudges in Eyre, is tranſlated by Act of Parliament to Iuſtices of Aſſize; which bee now, the Iudges of Circuits, and they doe vſe the ſame Courſe that Iuſtices in Eyre, did to proclaime their comming euery halfe yeare, and the place of their ſitting.

☞ *The authority of the Iuſtices of Aſſizes much leſſened, by the Court of Common Pleas, erected in H. 3. time.*

The buſineſſe of the Iuſtices in Eyre, and of the Iuſtices of Aſſize at this day is much leſſened, for that in *H.* 3. time there was erected the Court of Common-pleas at Weſtminſter, In which Court haue beene euer ſince and yet are begun and handled, the great ſuits of Lands, debts, benefices and contracts, fines for aſſurance

of

of Lands and recouries, which were wont to bee either in the Kings Bench, or elſe before the Iuſtices in Eyre. But the Statute of *Mag. Char. Cap.* 5. is negatiue againſt it. *Viz Communia placita non ſequantur, Curiam noſtram ſed ſequantur in aliquo loco certo*; which *locus certus* muſt be the Common pleas, yet the Iudges of Circuits haue 5. Commiſſions by which they ſit.

The Iuſtices of Aſſize haue at this day 5. Commiſſions by which they ſit.
1 *Oyer and Termin.*
2 *Goale Deliuery.*
3 *To take Aſſizes.*
4 *To take Niſi Pr.*
5 *Of the Peace.*

The firſt is, a Commiſſion of Oyer and Termnier directed vnto them, and many others of the beſt accompt, in their Circuit; But in this Commiſſion the Iudges of Aſſize are of the *Querum*, ſo as without them there can be no proceeding.

☞ *Oyer and Termiuer in which the Iudges are of the Quorum, and this is the largeſt Commiſſion they haue.*

This Commiſſion giueth them power to deale with Treaſons, Murtherers, and all manner of Felonies and Miſdemeanours whatſoeuer; and this is the largeſt Commiſſion that they haue.

The ſecond is a Commiſſion of Goale Deliuery; That is, onely to the Iudges themſelues, and the Clearke of the Aſſize aſſotiate, And by this Commiſſion they are to deale with euery Priſoner in the Goale, for what offence ſoeuer hee bee there. And to proceed with him accor-

☞ *Goale deliuery directed onely to the Iudges themſelues, and the Clearke of the Aſſize.*

ding to the Lawes of the Realme, and the quality of their offence; And they cannot by this Comiſſion doe any thing concerning any man, but thoſe that are Priſoners in the Goale. The courſe now in vſe of Execution of this Commiſſion of Goale Deliuery, is this. There is no Priſoner but is committed by ſome Iuſtice of Peace, who before he committed took his examination, and bound his accuſers and witneſſes to appeare and proſecute at the Goale deliuery. This Iuſtice doth certifie theſe examinations and bonds, and thereupon the Accuſer is called ſolemnely into the Court; and when he appeareth hee is willed to prepare a Bill of indictment againſt the Priſoner, and goe with it to the grand-Iury, and giue euidence vpon their oathes he and the witneſſes, which he doth; and then the Grand Iury write thereupon either *Billa vera*, and then the Priſoner ſtandeth indicted, or elſe *Ignoramus*, then he is not touched. The Grand Iury deliuer theſe Bils to the Iudges in their Court, and ſo many as they find indorſed *Billa vera*, they ſend for thoſe Priſoners, then is euery mans indictment put and read to him, and they aske him whether he be guilty or not; if he ſay not guilty, then he is asked how he will be tryed, he anſwereth, by the Countrey. Then the Sheriffe is commanded to return the

The manner of the proceedings of the Iuſtices of Circuits in their Circuits.

The courſe now in vſe with the Iudges for the execution of the Commiſſion of Goale deliuery.

the names of 12. Freeholders to the Court, which Freeholders be ſworne to make true deliuery betweene the King and the Priſoner, and then the indictment is againe read and the witneſſes ſworne, and ſpeake their knowledge concerning the fact, and the Priſoner is heard at large, what defence he can make, and then the Iury goe together and conſult. And after a while they come in with a verdict of guilty or not guiltie, which verdict the Iudges doe record accordingly. If any Priſoner plead not guilty vpon the indictment and yet will not put himſelfe to tryall vpon the Iury, (or ſtand mute) he ſhall be preſſed.

The Iudges when many priſoners are in the Goale doe in the end before they goe, peruſe euery one. Thoſe that were indicted by Grand Iury, and found not guiltie by the ſelect Iury, the y judge to be quitted, & ſo deliuer them out of the Goale. Thoſe that are found guilty by both Iuries they Iudge to death and command the Sheriffe to ſee execution done. To thoſe that refuſe tryall by the Countrie, or ſtand mute vpon the indictment, they iudge to be preſſed to death, ſome whoſe offences are pilfring vnder twelue pence value, they judge to be whipped. Thoſe that confeſſe their indictments, they iudge to death, whipping or otherwiſe, as their offence requireth.

And thoſe that are not indicted at all, but their bill of inditement returned with Ignoramus by the grand Iury and all other in the Goale, againſt whom no bils at all are, they doe acquit by proclamation out of the Goale; That one way or other they ridde the Goale of all the priſoners in it, But becauſe ſome priſoners haue their bookes and burned in the hand and ſo deliuered, It is neceſſary to ſhew the reaſon thereof. This hauing their bookes is called their Clergie, with in antient time began thus.

☞ *Book allowed to Clergie for the ſcarcitie of them to bee diſpoſed in Religious Houſes.*

For the ſcarcity of the Clergie in the Realme of England to be diſpoſed in Religious houſes, or for Preiſts, Deacons and Clerkes of pariſhes, there was a prreogatiue allowed to the Clergie, that if any man that could reade or were a Clerke, were condemned to death, the Biſhop of the Dioceſſe, might if he would clayme him as a clerke, and he was to ſee him tryed in the face of the Court.

Whether he could read or not the booke was prepared and brought by the Biſhop, and the Iudge was to turne to ſome place as he ſhould thinke meete, and if the priſoner could reade them then the Biſhop was to haue him deliuered ouer

vnto

vnto him to diſpoſe of in ſome places of the Clergie, as hee ſhould thinke meete. But if either the Biſhop would not demand him: or that the Priſoner could not read, then was hee to bee put to death.

And this Clergie was allowable in the ancient times and Law, for all offences whatſoeuer they were except Treaſon and robbing of Churches of their goods and ornaments. But by many Statutes made ſince, the Clergie is taken away for Murther, Burglarie, Robberie, Purſe-cutting, and diuers other felonies particularized by the Statutes to the Iudges, and laſtly; by a Statute made 18. *Elizabeth:* the Iudges themſelues are appointed to allow Clergie to ſuch as can read, being not ſuch offenders from whom Clergie is taken away by any Statute. And to ſee them burned in the hand, and ſo diſcharge them without deliuering them to the Biſhop, howbeit the Biſhop appointeth the deputie to attend the Iudges with a booke to trie whether they would reade or not.

☞ *Concerning the allowing of the Clergie to the Priſoner.*

Clergie allowed in all offences except Treaſon and Robbing of Churches, and now taken away by many Statutes.

1. *In Treaſon.*
2. *In Burglarie.*
3. *Roberie.*
4. *Purſe cutting.*
5. *Horſe-ſtealing.*

and in diuers other offences particularized in ſeuerall Statutes.

By the Stat. of 18. Eliz. the Iudges are appointed to allow Clergie, and to ſee them burned in the hand, & to diſcharge the Priſoners without deliuering them to the Biſhop.

The 3. Comiſſion, that the Iudges of Circuits haue, is, a Cõmiſſion directed to themſelues onely to take Aſſizes by which they

they are called Iuſtices of Aſſize, and the Office of thoſe Iuſtices is to doe right vpon Writs called Aſſizes, brought before them by ſuch as are wrongfully thruſt out of their Lands. Of which number of writs there was farre greater ſtore brought before them in antient times then now it is, for that mens ſeizons and poſſeſſions are ſooner recouered by ſealing Leaſes vpon the ground, and by bringing an *Ejectione firme*, and trying their tytle ſo, then by the long ſuites of Aſſizes.

☞ 4. *Commiſſion is to take Niſi Prius and this is directed to the two Iudges and the Clerke of the Aſſize.*

The 4. Cõmiſſion, is cõmiſſion to take *Niſi Prius* directed to none but to the Iudges themſelues and their Clerkes of Aſsizes, by which they are called Iuſtices of *Niſi Prius*. Theſe *Niſi Prius* happen in this ſort, when a ſuit is begun for any matter in one of the three Courts, the Kings Bench, Common Pleas, or the Exchequer here aboue, and the parties in their pleadings doe varie in a point of fact; As for example, If an action of Debt or Treſpaſſe growne for taking away goods, the Defendant denieth that hee tooke them, or in an action of the Caſe for ſlaunderous words, the Defendant denieth that he ſpake them.

Niſi Prius.

Then the Plaintiffe is to maintaine and proue them, that the obligation is the De-

Defendants deed, that hee either tooke the goods, or ſpake the words, the Law ſaith, that Iſſue is joyned betwixt them, which iſſue of the Fact is to bee tried by a Iurie of Twelue men of the Countie, where it is ſuppoſed by the Plaintiffe the priſes to bee done, and for that purpoſe the Iudges of the Court doe award a writ of *Venire fac:* in the Kings name to the Sheriffe of that Countie, commanding him to cauſe foure and twentie diſcreet Free-holders of his Countie at a certaine day to try this iſſue joynt, out of which foure and twentie onely Twelue are choſen to ſerue, and that double number is returned, becauſe ſome may make default, and ſome bee challenged vpon kindred, alliance, or partiall dealing.

Vew fac. pr. 24. Free-holders.

Theſe foure and twentie, the Sheriffe doth name and certifie to the Court, and withall that hee hath warned them to come at the day according to their writ. But becauſe at his firſt ſummons there falleth no puniſhment vpon the foure and twentie if they come not, they very ſeldome or neuer appeare vpon the firſt Writ, and vpon their default there is another Writ * returned to the Sheriffe, commaunding him to diſtraine them by their Lands to appeare at a certaine day appointed by the writ,

Diſtringas.

The manner of proceeding of Iuſtices of Circuits in their circuits.

The course the Iudges hold in their Circuits in the execution of their Commissiō concerning the taking of Nisi prius.

which is the next day after the *Nisi prius Iusticiarij nostri ad Assizas capiendas Venerint, &c.* of which words the writ is called a *Nisi prius*, and the Iudges of the circuit of that Countie in that varatis and meane time before the day of appearance appointed for the Iurie aboue, haue their Commission of *Nisi prius*, authority to take the appearance of the Iury of the County before them, and there to heare the Witnesses and proofes on both sides concerning this issue of fact, and to take the verdict of the Iury, and against the day they should haue appeared aboue, which to returne the verdict read in the Court aboue, returne is called *Postea.*

Postea.

And vpon this verdict clearing the matter in Fact, one way or other, the Iudges aboue giue iudgement for the partie for whom the verdict is found, and for such damages and costs as the Iury doth assesse.

By those tryals called *Nisi prius*, the Iuries and the parties are eased much of the charge they should bee put to, by comming to London with their Euidences and Witnesses, and the Courts of Westminster are eased of much trouble they should haue, if all the Iuries for tryals should appeare and try their causes in those Courts; for those Courts haue little leisure. Now though the Iuries come

not

not vp, yet in matters of great weight or where the tytle is intricate or difficult, the Iudges aboue vpon information to them doe retaine thoſe cauſes to be tryed there, and the Iuries doe at this day in ſuch cauſes come to the Barre at *weſtminſter*.

The fift Commiſſion that the Iudges in their Circuits doe ſit by, is the Commiſſion of the Peace in euery Countie of their circuit. And all the Iuſtices of the Peace hauing no lawfull impediment, are bound to bee preſent at the Aſſizes to attend the Iudges as occaſion ſhall fall out, if any make default the Iudges may ſet a fine vpon him at their pleaſure and diſcretions. Alſo the Sheriffe in euery ſhire through the Circuit, is to attend in perſon the Iudges all that time they bee within the Countie, and the Iudges may fine him if hee faile for negligence or misbehauiour in his Office before them; and the Iudges aboue may alſo fine the Sheriffe for not returning ſufficiently Writs before them.

5. Commiſſion is a Commiſſion of the Peace.

The Iuſtices of the Peace and the Sheriffe are to attend the Iudges in their Countie.

Propertie in Lands is gotten and transferred by one to another, thoſe foure manner of wayes.

1 By Entry.
2 By Diſcent.
3 By Eſcheat.
4 Moſt vſually by Conueyanee.

☞ *Of propertie of Lands to bee gained by Entrie.*

1 Propertie by Entry is, where a man findeth a piece of Land that no other poſſeſſeth or hath tytle vnto, and hee that findeth it doth enter, this Entry gaineth a Propertie; this Law ſeemeth to bee deriued from this text, *Terra dedit filijs hominum*, which is to bee vnderſtood, to thoſe that will till and manure it, and ſo make it yeeld fruit; and that is hee that entreth into it, where no man had it before. But this manner of gaining Lands was in the firſt dayes and is not now of vſe in England, for that by the conqueſt all the Land of this Nation was in the Conquerours hands, and appropriated vnto him; except, Religious and Church-lands, and the lands in Kent, which by compoſition were left to the former owners, as the Conquerour found them, ſo

All Lands in England were the Conquerours and appropriated to him vpon the Conqueſt of England, and held of him except, 1. Religious and Church-lands. 2 The lands of the men of Kent.

ſo that no man but the Biſhopricks, Churches, and the men of *Kent*, can at this day make any greater title then from the Conqueſt to his Lands in England, and Lands poſſeſſed without any ſuch title are in the Crowne and not in him that firſt entreth; as it is by Land left by the Sea, this Land belongeth to the King and not to him that hath the Lands next adioyning which was the auncient Sea Bankes, This is to bee vnderſtood of the inheritance of Lands: viz. That the inheritance cannot bee gained by the firſt entry. But an eſtate of *Franckins.* for an other mans life by our Lawes, may at this day be gotten by entrie. As a man called *A.* hauing land conueyed vnto him for the life of *B.* dyeth without making any eſtate of it, there whoſoeuer firſt entreth into the Land, after the deceaſe of *A.* getteth the propertie in the Land for time of continuance of the eſtate which was granted to *A.* for the life of *B.* which *B.* yet liueth, and therefore the ſaid Law cannot reuert to him. And to the heire of *A.* it cannot goe, for that it is not any ſtate of inheritance but onely an eſtate for another mans life; which is not deſcendable to the heire, except he be ſpecially named in the grant: viz. To him and his heires. As for the Exe-

Land left by the Sea belongeth to the King.

Occupantis.

cutors of *A.* they cannot haue it, for its not an eſtate teſtamentory that ſhould goe to the Executors as goods and Chattels ſhould, ſo as in truth, no man can intitle himſelfe vnto thoſe Lands; and therefore, the Law preferreth him that firſt entreth, and he is called *Occupans* and ſhall hold it during the life of *B.* but muſt pay the rent, performe the conditions, and doe no waſt. And he may by deed aſſigne it to whom he pleaſe in his life-time. But if he die, before he aſſigne it ouer, then it ſhall goe againe to him whomſoeuer entreth. And ſo all the life of *B.* ſo often as it ſhall happen.

☞ *Propertie of Lands by diſcent.*

Propertie of Lands by diſcent is, where a man hath Lands of inheritance and dyeth not diſpoſing of them, but leauing it to goe as the Law caſteth it vpon the heire. This is called diſcent of Land, and vpon whom the diſcent is to light, is the queſtion. For which purpoſe the Law of inheritance preferreth the firſt Child before all others, and amongſt children the male before the female, and amongſt males the firſt borne. If there bee no Children then the Brother, if no Brothers, then ſiſters, if neyther Brothers nor Siſters, then Vnckles, and for lacke of Vncles, Ants, if none of them, then Couzens in the neereſt degree of conſanguinity, with theſe three

three rules of diuerſities. 1. That the Eldeſt male ſhall ſafely inherit; but if it come to females, then they being all in an equall degree of neerenes ſhall inherit altogether and are called Parceners, and all they make but one heire to the Anceſtor. 2. That no brother nor ſiſter of the halfe blood ſhall inherit to his brother or ſiſter, but as a Child to his Parents, as for example. If a man haue two wiues, and by either wife a ſonne, the eldeſt ſonne ouerliuing his Father is to be preferred to the inheritance of the Father being Fee-ſimple; But if he entreth and dyeth without a child, the Brother ſhall not be his heire, becauſe he is of the halfe bloud to him, but the Vnckle of the eldeſt Brother or Siſter of the whole bloud, yet if the eldeſt Brother had dyed in the life of the Father, then the youngeſt Brother ſhould inherit the Land that the Father had, although it were a child by the ſecond wife, before any daughter by the firſt. The third rule about diſcents. That land purchaſed by the partie himſelfe that dyeth, is to be inherited; firſt, by the heires of the Fathers ſide, then if he haue none of that part by the heires of the Mothers ſide. But Land deſcended to him from his father or mother, are to go to that ſide only from which they came, and not to the other ſide.

Of diſcent 3. rules.

Brother or Siſter of the halfe bloud ſhall not inherit to his Brother or Siſter but only as a child to his Parents.

Diſcent.

Thoſe

Thoſe Rules of diſcent mentioned before are to bee vnderſtood of Fee-ſimples and not of entailed Lands, and thoſe rules are to bee reſtrained by ſome particular cuſtomes of ſome particular places: as namely, the cuſtome of *Kent*, that euery male of equall degree of Childhood, Brotherhood or kindred, ſhall inherit equally, as daughters ſhall being Parceners, and in many Burrough Townes of England, the Cuſtome alloweth the youngeſt ſonne to inherit, and ſo the youngeſt Daughter. The Cuſtome of *Kent* is called *Gauel* kind. The Cuſtome of Boroughes Burgh Engliſh.

Cuſtomes of certaine places.

And there is another note to bee obſerued in Fee-ſimple inheritance, and that is, that euerie heire hauing Land or inheritance, be it by common Law or by Cuſtome is chargeable, ſo farre forth as the value thereof extendeth with the binding acts of the Anceſtors from whom the inheritance deſcendeth; and theſe acts are colaterall encombrances, and the reaſon of this charge is, *Qui ſentit commodum ſentire debet incommodum ſiue onus.* As for example, if a man bind himſelfe and his heires in an obligation or doe Couenant by writing for him and his heires, or doe grant

Euery Heire hauing land is bound by the binding Acts of his Anceſtors if he be named.

grant an Anuity for him&his heires,which warrantie in all theſe caſes, the Law chargeth the heire after the death of the Anceſtor with this Obligation ; Couenant, Annuitie,Warrantie, Yet with theſe three Cautions. 1. That the partie muſt by ſpeciall name bind himſelfe and his heires, or Couenant, grant, and warrant for himſelfe and his heires ; otherwiſe, the heire is not to bee touched. Secondly, that ſome action muſt be brought againſt the heire, whilſt the Land or other inheritance reſteth in him vnaliened away; For if the Anceſtor dye, and the heire before an action be brought againſt him,vpon thoſe Bonds, Couenants, or Warranties, doe alien away the Land, then the heire is cleane diſcharged of the Burthen, except the Land was by fraud conueyed away of purpoſe,to preuent the ſuite intended againſt him. Thirdly, that no heire is further to bee charged,then the value of the Land deſcended vnto him, for the ſame Anceſtor that made the inſtrument of charge, and that Land alſo not to bee ſold outright, but to bee kept in extent and at a yearely value vntill the debt or damage be runne out,neuertheleſſe, if an heire that is ſure vpon ſuch a debt of his Anceſtor, doe not deale clearely with the Court, when he is ſued; that is, if hee come not immediately by

Dier. 114. Plowden.

Dier.149. Plowden. Dauy and Pepps caſe.

way of confeſſion and ſet downe the true quantitie of his inheritance deſcended, and ſo ſubmit himſelfe; therefore, as the Law requireth. Then that heire that otherwiſe demeaneth himſelfe, ſhal be charged of his his owne other Lands and goods, and of money for this deed of his Anceſtor. As for example. If a man bind himſelfe and his heires in an obligation, and dyeth leauing but 10. Acres of Land to his heire, if his heire be ſued vpon the bond, & commeth in, and denieth that he hath any by diſcent, and it is found againſt him by the verdict that he hath 10. Acres, this heire ſhall bee now charges by his falſe plea of his owne lands goods and bodie to pay the 100l. although the 10. Acres be not worth 10l.

Heire charged for his falſe plea.

☞ *Propertie of Lands by Eſcheat.*

Propertie of Lands by Eſcheat, is where the owder dyeth, ſeizeth of the lands in poſſeſſion without child or other heire thereby the Land for lacke of other heire, is ſaid to Eſcheat to the Lord of whom it is holden. This lacke of heire happeneth principally in two caſes. 1. where the Lands owner is a baſtard. 2. Where he is attainted of Felonie or Treaſon, neither can a Baſtard haue any heire except it be his owne child nor a man attainted of Treaſon, although it be his owne child.

Two cauſes of Eſcheat. Firſt, Baſtardy. Second Attainter of treaſon, felonie.

Vpon

Vpon Attainder of treaſon the King is to haue the land although hee be not the Lord of whom it is held, becauſe it is a Royall Eſcheat. But for felonie it is not ſo, for there the King is not to haue the Eſcheat, except the Land be holden of him. And yet where the Land is not holden of him the King is to haue the Land for a yeare and a day next enſuing the judgment of the Attainder, with a libertie to commit all manner of waſt all that yeare in houſes, gardens, ponds, lands and woods.

☞ *Treaſon.*

Attainder of treaſon intitleth the King though the lands be not holden of him otherwiſe in attainder of Felonie, &c. for there the King ſhall haue but Annum diem & vaſtum.

In theſe Eſcheats, two things are eſpecially to be obſerued; the one is, the tenure of the lands, becauſe it directeth the perſon to whom the Eſcheat belongeth: viz. the Lord of the Manor of whom the Land is holden. 2. The manner of ſuch attainder which draweth with it the Eſcheat, concerning the Tenures of Lands, it is to bee vnderſtood, that all lands are holden of the Crowne either mediately or immediately, and that the Eſcheat appertaineth to the immediate Lord, and not to the mediate. The reaſon why all land is holden of the Crowne immediatly or by Meſne Lords is this.

☞ *In Eſcheat two things are to bee obſerued.*

1. *The tenure.*

2. *The manner of the Attainde, all lands are holden of the Crowne immediatly or mediately by Meſne Lords, the Reaſon.*

Concerning the tenure of Lands.

The Conqueror got by right of Conqueſt all the land of the Realme into his owne

☞ *The Conqueror by right of Conqueſt as he gaue it hee ſtill*

got all the Lands of the realme into his hands, & reſerued rents and ſeruices Knights ſeruice, in Cap. *firſt inſtituted.*

The reſervations in Knights ſeruice tenure was 4.

1. *Marriage o' the wards male and female.*
2. *Horſe for Serv.*
3. *Homage & feal.*
4. *Primer Seiſin.*

hands in demeaſne, taking from euery man all eſtate, Tenure, propertie and libertie of the ſame, (except Religious and Church-lands, and the Land in *Kent*) and ſtill as hee gaue any of it out of his owne hand, he reſerued ſome retribution of rents or ſeruices or both, to him and to his heires; which reſeruation, is that, which is called the tenure of Land.

☞ *The policie of the Conqueror in the reſeruation of ſeruices conſtituted in ſoure particulars, Was o haue the marriage of his Wards both Male and Female.*

In which reſeruation, he had foure Inſtitutions, exceeding politique, and ſutable to the ſtate of a Conqueror.

Seeing his people to be part *Normans*, and part *Saxons*, the *Normans* he brought with him, the *Saxons* hee found heere: hee bent himſelfe to inioyne them by marriages in amitie, and for that purpoſe ordaines, that if thoſe of his noble Knights and Gentlemen, to whom hee gaue great rewards of Lands ſhould dye, leauing their heire within age, a Male within 21. and a femalle within 14. yeares, and vnmarried, then the King ſhould haue the beſtowing of ſuch heires in marriage in ſuch family, and to ſuch perſons as hee ſh ul: thinke meet, which intereſt of marriage went ſtill imployed, and doth at this day in euery tenure called Knights ſeruice.

Intereſt of marriage goeth employed in euery tenure by Knights ſeruice.

The

The ſecond was to the end, that his people ſhould ſtill bee conſerued in warlike exercíſes and able for his defence; when therefore, he gaue any good Portion of Lands, that might make the partie of abilitie or ſtrength, hee withall reſerued this ſeruice. That that partie and his heire hauing ſuch Lands, ſhould keepe a horſe of ſeruice continually, & ſerue vpon him himſelfe when the King went to wars, or elſe hauing impediment, to excuſe his owne perſon, ſhould find an other to ſerue in his place; which ſeruice of horſe and man, is a part of that ſeruice called Knights ſeruice at this day.

☞ *Reſeruation that his tenant ſhold keepe a horſe of Seruice, and ſerue vpon him himſelfe, when the King went to warres, which is a part of that ſeruice called Knights ſeruice.*

But if the Tenant himſelfe be an Infant, the King is to hold this Land himſelfe vntill hee come to full age, finding him meat, drinke, apparell, and other neceſſaries, and finding a horſe and a man, with the ouerplus to ſerue in the warres, as the Tenant himſelfe ſhould doe if he were at full age.

But if this inheritance deſcend vpon a woman, that cannot ſerue by her ſex, then the King is not to haue the Lands, ſhe being of 14. yeares of age, becauſe ſhee is then able to haue an husband, that may do the ſeruice in perſon.

☞ 3. *Institution of the Conquerour was that his tenants by Knights ſeruice vow vnto loyaltie, which be called Homage, and make vnto him oath of his faith which was called Fealtie.*

1. *Homage.*
2. *Fealtie.*

The third Inſtitution that vpon euery guift of Land the King reſerued a vow and an Oath to bind the partie to his faith and loyaltie, that vow was called *Homage*, the oath *Fealtie*; Homage, is to be done kneeling holding his hands betweene the knees of the Lord, ſaying in the French tongue; I become your man of Life and Lands, and earthly honour. Fealtie, is to take an oath vpon a booke, that hee will be a faithfull Tenant to the King and doe his ſeruice, and pay his rents according to his tenure.

Ayd money to make the Kings eldeſt Son a Knight, or to marry his eldeſt Daughter is likewiſe due to his Maieſtie from euery one of his Tenants in Knights ſeruice, that hold by a whole fee 20 s. and from euery Tenant in Soccage if his land be worth 10. pounds *per ann.* 20 s. *vide* N. 3. fol. 82.

☞ 4. *Inſtitution Was for Recognizon of the Kings bountie to bee payd by euery heire vpon the death of his anceſtor, Which is one yeares profit of the Lands, called,* Primer ſeiſin.

The 4. Inſtitution, was for Recognizon of the Kings bounty by euery heire ſucceeding his anceſtor in thoſe Kts. ſeruice lands, the King ſhould haue *Primer ſeiſin* of the lands, which is one yeares profit of the lands, and vntill this bee paid the King is to haue poſſeſſion of the land, & then

Eſcuage was likewiſe due vnto the King from his Tenant by Knights ſeruice, when his Maieſtie made a voyage royall to warre againſt another Nation, thoſe of his Tenants that did not attend him there for 40. dayes with Horſe and furniture fit for ſeruice, were to bee aſſeſſed in a certaine ſumme by the Act of Parliament, to bee payed vnto his Maieſty, which aſſeſſement is called Eſcuage.

to

to reſtore it to the heire which continueth at this day in vſe, and is the very cauſe of ſuing Liuerie, and that as well where the heire hath bin in ward or otherwiſe.

☞ *Knights Seruice in Capite, is a Tenure* de perſona Regis.

Theſe before mentioned by the rights of tenure, are called Knights ſeruice in *Capite*, which is as much to ſay, as tenure *de perſona Regis & Caput*, being called the chiefeſt part of the perſon, it is called a Tenure in *Capite*, or in Chiefe. And its alſo to be noted, that as this tenure by *Capite* in Knights ſeruice generally was a great ſafetie to the Crowne, ſo alſo the Conquerour inſtituted other tenures in Capite neceſſary to his eſtate; as namely, he gaue diuers lands to be holden of him by ſome ſpeciall Seruice about his perſon, or by hauing ſome ſpeciall Office in his houſe, or in the Field, which haue Knights ſeruice and more in them; And theſe hee called Tenures by *Grand Seriantie*. Alſo hee prouided vpon the firſt guift of Lands, to haue Reuenues by continuall Seruice of Ploughing his Land, repairing his Houſes, Parkes pales, Caſtles and the like. And ſometimes to a yearely prouiſion of Gloues, Spurres, Hawkes, Horſes, and Hounds and the like; which kind of reſeruations are called alſo tenures in Chiefe or in

Tenants by Grand Serjantie, were to pay reliefe at the full age of euery heire, which was one years value of the lands ſo held vltra Reprii.

Grand Serjantie.
Petite Serjantie.

in Capite of the King, but they are not by Knights ſeruice. But ſuch things as the Tenants may hire another to doe or prouide for his money. And this Tenure is called a tenure by Soccage in Capite, the word *Soccagium* ſignifying the Plough, howbeit in this later time, the Seruice of Ploughing the land is turned into money rent, and ſo of Harueſt workes, for that the Kings doe not keep their Demeaſne in their owne hands as they were wont to doe, yet what Lands were *De antiquo Dominico Corona*, it well appeareth in the Records of the Exchequer called the book of Doomeſday. And the Tenants by auntient Demeaſne, haue many Immunities and Priuiledges at this day, that in auntient times were granted vnto thoſe Tenants by the Crowne, the particulars whereof are too long to ſet downe.

The inſtitution of Soccage in Capite and what it is now turned into monies rents.

Antient Demeaſne Tenure, what?

Theſe Tenures in *Capite*, as well as that by *Soccage*, as the others by *Knights ſeruice* haue this propertie; that the antient Tenants cannot alien their Lands without licence of the King. if hee doe, the King is to haue a Fine for the contempt, and may ſeize the land, and retaine it vntill the fine bee paid. And the reaſon is, becauſe the King would haue a libertie in the choyce of his Tenant, ſo that no man ſhould preſume to enter into thoſe Lands and hold

hold them (for which the King was to haue thoſe ſpecial ſeruices done him) without the Kings leaue; This licence and fine as it is now digeſted is eaſie and of courſe.

☞ *Office of Alienation.*

There is an office called the office of *Alienation*, whereby any man may haue a licence at a reaſonable rate, it is at the third part of one yeares value of the Land moderately rated. A Tenant in *Capite* by Knights ſeruice or grand Seriantie, was reſtrained by antient Statute, that he ſhould not giue nor alien away more of his Lands, then that with the reſt hee might bee able to doe the ſeruice due to the King, and this is now out of vſe.

A licence of alienation is the third part of one yeres value of the land moderately rated.

☞ *Aid, a ſumme of mony ratably leauied according to the proportion of the Lands.*

And to this Tenure by Knights Seruice in chiefe, was incident that the King ſhould haue a certaine ſumme of money, called *Aid*; due to bee ratably leauied amongſt all thoſe Tenants proportionably to his Lands, to make his eldeſt Sonne a Knight, or to marry his eldeſt Daughter.

Enery Tenant by Knights Seruice in Capite, had to make the Kings eldeſt Son a Knight, or to marry his Eldeſt daughter.

Tenants by Soccage in Cap. muſt ſue liuerie and pay Primer Seiſin, and not to bee in Ward for bodie or Land.

And it is to bee noted, that all thoſe that hold Lands by the Tenure of Soccage in *Capite* (although not by Knights ſeruice) cannot alien without licence, and

they are to ſue liuery, and pay Primer Seiſin, and not to be in Ward for bodie or Land.

☞ *How Mannors were at firſt created.*

Mannors created by great men in imitation of the policie of the King in the inſtitutions of tenures.

By example and reſemblance of the Kings policie in theſe Inſtitutions of Tenures; the Great men and Gentlemen of this Realme did the like ſo neere as they could; as for example, when the King had giuen to any of them two thouſand Acres of Land, this partie purpoſing in this place to make his dwelling (or as the old word is) his Manſion houſe; or his Mannor houſe, did deuiſe how he might make his Land a Compleat habitation to ſupply him with all manner of neceſſaries, and for that purpoſe, hee would giue of the outtermoſt parts of two thouſand Acres, 100. or 200. Acres or more or leſſe, as he ſhould thinke meet: to one of his moſt truſtie Seruants with ſome reſeruation of rent to find a horſe for the Warres, and goe with him when he went with the King to the Warres, adding vowe of Homage, and the Oath of Fealtie, Wardſhip, Marriage, and reliefe. This Reliefe is to pay fiue pound for euery Knights Fee, or after the rate for more or

Knights ſeruice tenure reſerued to common perſons.

Reliefe is 5 l. to bee paid by euery Tenant by Knights ſeruice to his Lord vpon his entrance reſpectiuely for euery Knights fee deſcended.

Knights Seruice Tenure created by the Lord is not a Tenure by Knights ſeruice of the perſon of the Lord, but of his Mannor.

kſſe

leſſe at the entrance of euerie Heire, which Tenant ſo created and placed, was and is to this day called a Tenant by Knights Seruice, and not by his owne perſon, but of his Mannors; of theſe hee might make as many as hee would. Then this Lord would prouide that the Land which hee was to keepe for his owne vſe, ſhould bee ploughed, and his Harueſt brought home, his Houſe repayred, his Parke pailed and the like, and for that end would giue ſome leſſer parcels to ſundry others, of twentie, thirtie, fortie or fiftie Acres; reſeruing the ſeruice of ploughing a certaine quantitie or ſo many clayes of his Land, and certaine Harueſt workes or dayes in the Harueſt to labour or to repaire the Houſe, Parke, Pale, or otherwiſe, or to giue him for his Prouiſion, Capons, Hens, Pepper, Commin, Roſes, Gillyflowers; Spurres, Gloues, or the like; or to pay him a certeine rent, and to bee ſworne to be his faithfull Tenant, which Tenure was called a ſoccage Tenure, and is ſo to this day, howbeit moſt of the ploughing and harueſt ſeruices, are turned into mony rents.

Soccage Tenure reſerued by the Lord.

☞ *Reliefe of Tennant in Soccage one yeares rent and no Wardſhip or other profit upon the dying of the Tenant.*

The Tennants in Soccage at the death of euery Tennant were to pay reliefe, which was not as Knights ſeruice, as fiue pound a Knights fee. But it was, and ſo is ſtill, one yeares rent of the Land; and no wardſhip or other profit to the Lord. The remainder of the two thouſand Acres hee kept to himſelfe, which hee vſed to manure by his bondmen, and appointed them at the Courts of his Mannor how they ſhould hold it, making an entrie of it into the Roll of the Remembrances of the Acts of the Court, yet ſtill in the Lords power to take it away: and therefore they were called Tennants at will, by Coppie of Court Roll; being in truth, bondmen at the beginning, but hauing obtained freedome of their perſons, and gained a cuſtome by vſe of occupying their Lands, they now are called Coppie-holders, and are ſo priuiledged, that the Lord cannot put them out, and all through Cuſtome. Some Coppie-holders are for lifes, one, two, or three ſucceſſiuely; and ſome inheritances from heire to heire by cuſtome, and cuſtome ruleth theſe eſtates wholly, both for widdowes eſtates, fines, harriots, forfeitures, and all other things.

Ayd mony and Eſcuage mony is likewiſe due vnto the Lords of their Tenants, *vide* N. 3. fol. 82. and 83.

Villenage or Tenure by Coppie of Court Roll.

Mannors

Mannors being in this ſort made at the firſt, that the Lord of the Mannor ſhould hold a Court which is no more then to aſſemble his Tenants together, at a time by him to be appointed; in wch Court, he was to be informed by oath of his Tenants, of of all ſuch duties, Rents, releaſes, Wardſhips, Copie-holds or the like, that had hapned vnto him; which is called a Court Baron, and herein a Tennant may ſue for any debt or Treſpaſſe vnder 40l value, and the Freeholders are to Iudge of the cauſe vpon proofe proſecuted vpon both ſides. And therefore the Free-holders of theſe Mannors, as incident to their Tenures do hold by ſuit of Court which is to come to the Court, and there to Iudge betweene partie and partie in thoſe pettie actions. And alſo to enforme the Lords of the duties of rents and ſeruices vnpaid to him from his Tennants. By this courſe it is diſcerned who be the Lords of lands, ſuch as if the Tennants dye without heire, or bee attainted of felonie or Treaſon, ſhall haue the Land by Eſcheat.

☞ *Court Baron With the vſe of it.*

Suit to the Court of the Lord incident to the Tenure of the Free-holders.

Now concerning what attainders ſhall giue the Eſcheat to the Land is to bee *to the Lord. Attainders, 1. By iudgement. 2. By verdict confeſſion. 3. By outlary giue the Lands to the Lord.*

☞ *What attainders ſhall giue the Eſcheat*

noted, that it muſt eyther bee by Iudgement of Death giuen in ſome Court of Record againſt the Felon found guiltie by Verdict, or confeſſion of the Felonie, or it muſt bee by Out-lawrie of him.

☞ *Of an Attainder by Out-lawrie.*

The Out-lawrie groweth in this ſort, a man is Indicted for Felonie, being not in hold, ſo as hee cannot bee brought in perſon to appeare and to bee tryed, inſomuch that Proceſſe of *Capias* is therefore awarded to the Sheriffe, who not finding him returneth *Non eſt inventus in Balliva mea*; and therefore, another *Capias* is awarded to the Sheriffe, who likewiſe not finding him maketh the ſame returne, then a Writ called an *Exigent* is directed to the Sheriffe, commaunding him to Proclaime him in his Countie Court fiue ſeuerall Court dayes to yeeld his body, which if the Sheriffe doe, and the partie yeeld not his body, hee is ſayd by the Default to bee Out-lawed, the Coroners there adjudging him Out-lawed, and the Sheriffe making the returne of the Proclamations and of the judgement of the Coroners, vpon the backſide of the writ. This is an attainder of Felonie, whereupon the Offender doth forfeit his Lands by an Eſcheat

Eſcheat to the Lord of whom they are holden.

But note that a man found guilty of Felonie by verdict or confeſſion, and praying his Cleargie, preuenteth the judgement of Death, and is called a Clerke conuict, who looſeth not his Lands, but all his Goods, Chattels, Leaſes and Debts.

☞ *Prayer of Clergie.*

So a man that will not anſwer nor put himſelfe vpon tryall, although hee be by this to haue Iudgement of Preſſing to Death, yet hee doth forfeit no Lands, but Goods, Chattels, Leaſes and Debts, except his offence bee Treaſon, and then hee forfeiteth his Lands to the Crowne.

☞ *He that ſtandeth mute forfeiteth no Lands, except for Treaſon.*

So a man that killeth him-ſelfe ſhall not looſe his Lands, but his Goods, Chattels, Leaſes and Debts. So of thoſe that kill others in their owne defence, or by miſfortune.

☞ *Hee that killeth himſelfe forfeiteth but his Chattels.*

A man that beeing purſued for Felonie, and flyeth for it, looſeth his Goods for his flying, although hee returne and is tryed, and found not guiltie of the Fact.

☞ *Flying for Felony, a forfeiture of Goods.*

So

☞ *He that yeeldeth his body vpon the Exigent for Felenie forfeiteth his goods.*

So a man Indicted for Felonie, if hee yeeld not his body to the Sheriffe vntill after the Exigent of Proclamation is awarded vnto him, this man doth forfeit all his goods, for his long ſtay, although hee be found not guiltie of the Felonie, but is not attainted to looſe his lands, but onely ſuch as haue Iudgements of Death by tryall vpon verdict of their owne confeſſion, or that they be by Iudgement of the Coroners out-lawed as before.

☞ *Lands entailed, Eſcheat to the King for Treaſon.*

Beſides the Eſcheats of lands to the Lords of whom they be holden for lack of heires, and by attainder for Felony (which onely doe hold place in Fee-ſimple lands) there are alſo forfeiture of Lands to the Crowne by attainder of Treaſon; as namely, if one that hath entailed Lands commit Treaſon, hee forfeiteth the profits of the lands for his life to the Crowne, but not to the Lord.

☞ *Tenant for life committeth Treaſon or Felonie, there ſhall be no Eſcheat to the Lord.*

And if a man hauing an eſtate for life of himſelfe or of another, commit Treaſon or Felonie, the whole eſtate is forfeited, but no Eſcheat to the Lord.

But a Coppie-hold, for Fee ſimple or for life, is forfeited to the Lord and not to the

the Crowne; and if it bee entailed, the Lord is to haue it during the life of the offender, and than his heire is to haue it.

The Cuſtomes of *Kent* is, that Gauilkind land is not forfeitable nor Eſcheatable for Felonie, for they haue an old ſaying; The Father to the Bough, and the Sonne to the plough.

If the Husband was attainted, the Wife was to looſe her thirds in caſes of Felonie and Treaſon, but yet ſhe is not offender, but at this day it is holden by Statute Law that ſhee looſeth them not, for the Husbands Felony. The relation of theſe forfeits are theſe.

☞ *The wife looſeth no power notwithſtanding the husband be attainted of Felonie.*

Of the Relation of Attainders, as to the Forfeiture of Lands and goods, with the diuerſity.

1. That men attainted of Felonie or Treaſon by verdict or Confeſſion, doe forfeit all the Lands they had at the time of their offence committed, and the King or the Lord whoſoeuer of them had the Eſcheat or forfeiture, ſhall come in and auoid all Leaſes, Acts, Statutes, Conueyances done by the offender, any time ſince the offence done. And ſo is the Law cleare alſo if a man be attainted

☞ *Attainder in Felonie or Treaſon by verdict, confeſſion, or outlawy, forfeiteth all they had from the time of the offence committed.*

for Treaſon by outlawry, but vpon attainder of felonie by outlawry, ſince it hath beene much doubted by the Lawbookes, whether the Lords title by eſcheat ſhall relate backe to the time of the offence done, or onely to the date or leſte of the writ of Exigent for Proclamation, thereupon he is outlawed; howbeit at this day it is ruled that it ſhall reach backe to the time of his fact, but for goods, and chattels, and debts, the Kings title ſhall looke no further backe then thoſe goods, the partie attainted by verdict or confeſſion, had at the time of the verdict and confeſſion giuen or made. And in outlawries at the time of the Exigent as well in Treaſons as Felonies, wherein it is to bee obſerued that vpon the parties firſt apprehenſion, the Kings Officers are to ſeize all the goods and Chattels and preſerue them together, diſpending onely ſo much out of them as it is fit for the ſuſtentation of the perſon in priſon, without any waſting, or diſpoſing them vntill Conuiction, and then the propertie of them is in the Crowne, and not before.

And ſo it is vpon an attainder of outlawrie, otherwiſe it is in the attainder by verdict, confeſſion, and outlawrie as to their relation for the forfeiture of goods and Chattels.

The Kings Officers vpon the apprehenſion of a Felon are to ſeize his goods and Chattels.

It is alſo to bee noted, that perſons attainted of Felonie or Treaſon, haue no capacitie in them, to take, obtaine or purchaſe, ſaue onely to the vſe of the King, vntill

☞ *A perſon attaintedmay purchaſe but it ſhall be to the Kings vſe.*

vntill the partie be pardoned. Yet the partie giueth not backe their Lands or Goods without a ſpeciall Pattent of Reſtitution, which cannot reſtore the bloud without an Act of Parliament. So if a man haue a Sonne, and then is attainted of Felonie or Treaſon, and pardoned, and purchaſeth Lands, and then hath iſſue an other ſonne and dyeth; the Sonne hee had before he had his pardon, although hee be his eldeſt Sonne, and the Pattent haue the words of reſtitution to his Lands ſhall not inherit, but his ſecond Sonne ſhall inherit them. And not the firſt; Becauſe, the bloud is corrupted by the Attainder, and cannot be reſtored by Pattent alone, but by Act of Parliament. And if a Man haue two Sons and the eldeſt is attainted in the life of his Father, and dyeth without iſſue, the Father liuing, the ſecond ſonne ſhall inherit the Fathers Lands, but if the eldeſt Sonne, haue any iſſue, Though he die in the life of his Father, then neither the ſecond Son, nor the iſſue of the eldeſt, ſhall inherit the Fathers Lands, but the Father ſhall there be accompted to dye without Heire, and the Land ſhall Eſcheat whether the eldeſt Sonne haue iſſue or not, afterward or before, though he be pardoned after the death of his Father.

☞ There can be no reſtitution in Bloud, without Act of Parliament but a pardon enableth a man to purchaſe and the heire begotten after ſhall inherit thoſe Lands.

Propertie of Lands by Conueyance is, firſt diſtributed into eſtates, for Yeares, for Life, in Tayle, and Fee-ſimple.

☞ *Propertie of Land by conueyance diuided into*
1. *Eſtates in Fees.*
2. *In Tayle.*
3. *For Life.*
4. *For Yeeres.*

FOr Eſtates for Yeares, which are commonly called Leaſes for Yeares, they are thus made; where the owner of the Land agreeth with the other by word of mouth, that the other ſhall haue, hold, and enioy the Land, to take the profits thereof for a time certaine of Yeares, Moneths, Weekes and dayes, agreed between them; and this is called a leaſe Paroll; ſuch a leaſe may be made by writing Pole or Indented of deuiſe grant and to farme let, and ſo alſo by fine of Record, but whether any Rent be reſerued or no, it is not materiall, vnto theſe leaſes there may bee annexed ſuch exceptions, conditions and Couenants, as the parties can agree of; They are called chattels Reall, and are not inheritable by the heires, but goe to the Executors and Admini-

Leaſe Paroll.

Leaſe by writing. Pole or indented.

A rent need not to be reſerued.

Leaſe for yeares they goe to the Executors and not to the Heires.

Adminiſtrators, and be ſole able for debts in the life of the owner, or in the Executors or Adminiſtrators by Writs of Execution vpon Statutes, Recognizances, Iudgements of Debts or Damages. They be alſo forfeitable to the Crowne by Outlawry, by Attainder for Treaſon, Felonie, or Premunier, Killing himſelfe, Flying for Felonie although not guilty of the fact, ſtanding out and refuſing to bee tryed by the Country, by Conuiction of Felonie, without Iudgement, Pettie larcerie, or going beyond the Sea without licence.

By what means they are forfeitable.

Leaſes are to bee forfeited by attainder.

1. *In Treaſon.*
2. *Felonie.*
3. *Premunire.*
4. *By killing himſelfe.*
5. *For flying.*
6. *Standing out or mute, or refuſing to bee tryed by the Country.*
7. *By Conuiction.*
8. *Pettie larcerie.*
9. *Going beyond the Sea without Licenſe.*

They are forfeitable to the Crowne, in like manner as Leaſes for Yeares, or intereſt gotten in other mens Lands by extending for debt vpon Iudgement in any Court of Record, Stat. Marchant, Stat. Staple Recognizances, which beeing vpon Statutes are called Tenants by Stat. Marchant, or Staple. The other Tenants by Elegit, and by Wardſhip of Bodie and Lands, for all theſe are called Chattels Reall, and goe to the Executors and Adminiſtrators, and not to the heires, and are ſoleable and forfeitable as Leaſes for yeares are.

☞ *Extents vpon Stat. Staple, Marchant, Elegit, Wardſhip of Bodie and Lands are Chattels and forfeitable in the ſame manner as leaſes for yeares are.*

☞ *Leaſe for life is not forfeitable by outlawry except in caſes of Felonie or Premunire and then to the King and not to the Lord by Eſcheat and it is not forfeited by any of the meanes before mentioned of of leaſes for yeares.*

Leaſe for liues are alſo called Freeholds, they may alſo bee made by Word or writing, there muſt bee Liuerie and Seiſen giuen at the making of the Leaſe, whom we call, the Leſſor; commeth to the doore, backſide, or Garden; if it be a houſe, if not, then to ſome part of the Land, and there he expreſſeth, that hee doth graunt vnto the taker; called, the Leſſee, for tearme of his life: and in Seiſen thereof, hee deliuereth to him a Turfe, twig, or Ring of the doore, and if the Leaſe bee by writing, then commonly there is a note written on the backſide of the Leaſe, with the names of thoſe witneſſes, who were preſent at the time of the Liuerie of Seiſen made; This eſtate, is not ſaleable by the Sheriffe for Debt, but the Land is to bee extended for a yearely value, to ſatisfie the Debt. It is not forfeitable by Outlawrie, except in caſes of Felonie, nor by any of the meanes before mentioned, of Leaſes for yeares; ſauing an in Attainder for Felonie, Treaſon, Premunire, and then onely

What Liuerie of Seiſen is, and how it is requiſite to euery Eſtate for life.

Indorſement of Liuerie vpon the Backe of the deed and witneſſes of it.

Leaſe for life not to bee ſould by the Sheriffe for debt but extended yearely.

onely to the Crowne, and not to the Lords by Eſcheat.

And though a Noble man or other, haue libertie by Charter, to haue all Felons Goods; yet a Tennant holding for tearme of life, being attainted of Felonie, doth forfeit vnto the King and not to this Noble man.

☞ *A man that hath bene a Felon, by Charter ſhall not haue the tearme if leaſer for life be attainted.*

If a man haue an Eſtate in Lands, for an other mans life, and dyeth; this Land cannot goe to his Heire, nor to his Executors, but to the partie that firſt entreth; and he is called, an Occupant.

☞ *Occupant.*

A Leaſe for yeares or for life, may be made alſo by fine of Record, or bargaine and ſale, or Couenant to ſtand ſeized vpon good conſiderations of Marriage, or Bloud, the reaſons whereof, are hereafter expreſſed.

☞ *Of eſtate tailes and how ſuch an eſtate may be limited.*

Entayles of Lands, are created by guift; with Liuerie and Seizen to a man, and to the heires of his bodie, this word (Body) making the entaile, may be demonſtrated and reſtrained to the Males or Females; heires

heires of their two bodies, or of the body of eyther of them, or of the body of the Grand-father.

☞ *By the Stat. of West. 1. made in* E. 1. *time estates in tayle were so strengthened they were not forfeitable by any attainder.*

Entayles of Lands began by a Statute made in *Ed.* 1. time, by which also they are so much strengthened, as that the Tenant in Tayle cannot put away the Land from the heire by any Act of conueyance or Attainder, nor Let it, nor incomber it, longer then his owne Life.

☞ *The great inconuenience that ensued thereof.*

But the inconueniencie thereof was great, for by that meanes, the Land being so sure tyed vpon the heire as that his Father could not put it from him, it made the Sonne to bee disobedient, negligent, and wastfull; often marrying without the Fathers consent, and to grow insolent in vice; knowing, that there could bee no cheeke of dis-inheriting him. It also made the owners of the Land lesse fearefull to commit Murthers, Felonies, Treasons, and Manslaughters; for that they knew, none of these acts could hurt the Heire of of his inheritance. It hindred men that had intayled Lands, that they could not make the best of their Lands by fine and improuement, for that none vpon so meertaine an estate, as for terme of his owne life

life would giue him a fine of any valew, nor lay any great ſtocke vpon the Land, that might yield rent improued.

Laſtly, thoſe Entailes did defraud the Crowne, and many Subjects of their Debts; for that the Land was not lyable longer then his owne life-time; which cauſed, that the King could not ſafely commit any office of accompt to ſuch, whoſe Land were entailed, nor other men truſt them with loane of money.

☞ *The prejudice the Crowne received thereby.*

Theſe inconveniences, were remedied by Acts of Parliment; as namely, by Acts of Parliament later then the Acts of Entailes, made, 4. *H.* 7. 32. *H.* 8. A Tenant in taile may diſ-inherit his Sonne by a fine with Proclamation, and may by that meanes alſo, make it ſubiect to his Debts and Sales.

The Stat. 4. H 7. *and* 32. H 8 *to bar eſtates taile by fine.*

By a Satute made, 29 *H* 8. A Tenant in taile, doth forfeite his lands for Treaſon; and by an other Act of Parliament, 32. *H.* 8. He may make leaſes good againſt his heire for 21. years, or three liues; ſo that it be not of his cheife Houſes, Lands, or demeaſne, or any leaſe in Reuerſion, nor leſſe rent reſerued; then, the Tenants haue payed moſt part of 21. yeares before,

26. H. 8.

32. H. 8.

nor haue any manner of Diſcharge for doing waſts and ſpoiles, by a Statute made 33 *H* 8. Tenants of Entayled lands, are lyable to the Kings debts by Extent, & by a Stat. made 13. & 39. *Eliz.* they are ſaleable for the arrerages vpon his accompt for his Office; So that now it reſteth, that Entayled Lands haue two priuiledges onely, which bee theſe. Firſt, not to be forfeited for Felonies. Secondly not to bee extended for Debts after the parties death, except the Entayles bee cut off by Fine and Recouerie.

33 H 8.

13. & 39. Eliz

Entayles two priuiledges.

1 *Not forfeitable for Felonie.*

2. *ly Not extendable for the Debts of the partie after his death* Proviſo, *not to put away the Land from his next heyre. If he do to forfeit his owne Eſtate, and that his next heyre muſt enter.*

☞ *Of the new deviſe called a Perpetuitie, Which is an Entayle With an addition.*

But it is bee noted, ſince theſe notable Statutes and remedies prouided by Statutes doe dock Entayles, there is ſtart vp a deuice called Perpetuitie, which is an Entayle with an addition of a *Proviſo* Conditionall tyed to his Eſtate, not to put away the Land from his next heyre; and if hee doe, to forfeit his owne eſtate. Which Perpetuities if they ſhould ſtand, would bring in all the former inconueniences ſubiect to Entayles, that were cut off by the former mentioned Statutes and farre greater; for by the Perpetuitie, if he that is in poſſeſſion ſtart away neuer ſo little, as in making a Leaſe, or ſelling a little quillet, forgetting after two or three

De-

Deſcents, as often they doe, how they are tyed, the next Heyre muſt enter; who peradventure is his Sonne, his Brother, his Vncle or kinſman, and this raiſeth vnkind Suites ſetting all that kindred at jarres, ſome taking one part ſome another, and the principall parties waſting theyr time and money in ſuites of Law. In the end, they are both conſtrained in neceſſitie to joyne both in a Sale of the Land, or a great part of it to pay theyr Debts, occaſioned through theyr Suites; And if the chiefeſt of the Family for any good purpoſe of well ſeating himſelfe, by ſelling that which lyeth farre off to buy that which is neerer, or for the advancement of his Daughters or younger Sonnes, ſhould haue reaſonable cauſe to ſell the Perpetuitie if it ſhould hold good, reſtraineth him. And more then that, where many are owners of inheritance of Land not Entayled, may during the minoritie of his Eldeſt ſonne appoint the profits, to goe to the aduancement of the younger Sonnes and pay Debts by Entayle and Perpetuities, the owners of theſe Lands cannot doe it, but they muſt ſuffer the whole to diſcend to his eldeſt Sonne, and ſo to come to the Crowne by Wardſhip all the time of his Intancie.

Theſe Perpetuities would bring in all the former inconueniencies of Eſtates tailes

The inconueniencies of theſe Perpetuities.

☞ *Quere whether it bee better to reſtraine men by theſe Perpetuities from alienations or to hazard the vndoing of houſes by vnthrifty Poſteritie.*

Wherefore ſeeing the dangerous times and vntowardly Heyres, they might preuent thoſe miſchiefes of vndoing theyr Houſes by conueying the Land from ſuch heyres, if they were not tyed to the ſtake by thoſe Perpetuities, & reſtrayned from Forfeiting to the Crowne, and diſpoſing of it to theyr owne or to theyr Childrens good. Therefore, it is worthy of conſideration, whether it bee better for the Subject and Soveraigne to haue the lands ſecured to mens Names and Bloods by perpetuities, with all inconueniences aboue-mentioned, or to bee in hazard of vndoing his Houſe by vnthriftie poſteritie.

☞ *The laſt and greateſt Eſtate in Land is Fee-ſimple.*

The laſt and greateſt Eſtate of Lands in Fee-ſimple, and beyond this there is none of the former for Liues, Yeares or Entayles; but beyond them, is Fee ſimple. For it is the greateſt, laſt and vttermoſt degree of Eſtates in Land; therefore hee that maketh a Leaſe for life, or a guift in tayle, may appoint a remainder when hee maketh another for life or in tayle, or to a third in Fee-ſimple; but after a Fee-ſimple hee cannot limit no other Eſtate. And if a man doe not diſpoſe of the Fee-ſimple by way of remainder, when hee maketh

A remainder cannot bee limitted vpon an eſtate in Fee-ſimple.

maketh the guift in tayle, or for liues, then the Fee-simple resteth in himselfe as a Reuertion. The difference betweene a Reuertion and a Remainder, is this. The Remainder is alwayes a succeeding an Estate, appointed vpon the guifts of a precedent Estate, at the time when the Precedent is appointed. But the Reuertion is an estate last in the giuer, after a particular estate made by him for Yeares, Life, or Entaile; where the remainder is made with the particular estates, then it must be done by Deeds in writing, with Liuerie and Seisen, and cannot by words; And if the giuer will dispose of the Reuertion after it remaineth in himselfe, hee is to doe it by writing, and not by Poll; and the Tenant is to haue a notice of it, and to atturne it, which is to giue his assent by word, or paying rent, or the like; and except the Tenant will thus atturne the partie to whom the Reuertion is granted cannot haue the Revertion, neither can he compell him by any Law to atturne, except the grant of the Reuertion be by fine; and then, hee may by writ provided for that purpose: and if hee doe not purchase by that writ, yet by the fine, the Revertion shall passe; and the Tenant shall pay no rent, except he will himselfe, nor bee punished for any wastes in houses, vnlesse it bee graunted by bargaine

The difference betweene a Remainder and a Revertion.

A Revertion cannot bee granted by word.

Atturnement must be had to the grant of the Revertion.

The Tenant not compellable to atturn but where the Revertion is granted by fine.

and Sale by Indenture in Rolles; Theſe Fee ſimple eſtates lye open to all perils, Forfeitures, Extents, Incumbrances and ſales.

☞ *Lands may be conueyed ſix manner of wayes.*
1 *By Feofment.*
2 *By Fine.*
3 *By Recouerie.*
4 *By Vſe.*
5 *By Couenant.*
6 *By Will.*

What a Feofment of land is.

Lands are conueyed by theſe 6. meanes; Firſt, by Feofment, which is, where by Deed Lands are giuen to one and his heyres, and Liuerie and Seizein made accordingly to the forme and effect of the Deed, if a leſſer eſtate then Fee-ſimple bee giuen and liuerie of ſeizein made it is not called a Feofment, except the Fee-ſimple bee conueyed.

☞ *What a Fine is, and how Lands may bee conueyed hereby.*

A Fine is a reall agreement, beginning thus, *Hæc eſt finalis Concordia &c.* This is done before the Kings Iudges in the Court of Common Pleas, concerning Lands that a man ſhould haue from another to him and his Heyres, or to him for his Life, or to him and the heyres males of his body, or for yeares certaine, whereupon rent may bee reſerued but no Condition or Couenants. This Fine is a Record of great credit, and vpon this Fine are foure Proclamations made openly in the Common Pleas; That is, in euery Terme one for foure Termes together, and if any man hauing right to the ſame, make not his claime

claime within fiue yeares after the Proclamations ended, hee looſeth his right for euer; except he an Infant, a Woman covert, a Mad-man, or beyond the Seas, and then his right is ſaued; ſo that hee claime within fiue yeares after the death of her husband full Age, recouerie of his wits, or returne frō beyond the Seas. This Fine is called a Feofment of Record, becauſe that it includeth all that the Feofment doth, & worketh further of his owne nature, and barreth Intailes peremptorily whether the heyre doth clayme within fiue yeares or not, if hee clayme by him that leauied the Fine.

Fine yeares non Clayme barreth not.
1 *An Infant.*
2 *Feme Covert.*
3 *Mad-man.*
4 *Beyond Sea.*

Fine is a Feofment of Record.

Recoueries are where for aſſurances of Lands the parties doe agree, that one ſhall begin an Action reall againſt the other, as though hee had good right to the Land, and the other ſhall not enter into Defence againſt it, but alleadge that he bought the Land of he who had warranted vnto him, and pray that *I. H.* may be called in to defend the Title, which *I. H.* is one of the Cryers of the Common Pleas, and is called the *Common Voucher*. This *I. H.* ſhall appeare and make as if he would defend it, but ſhall pray a day to bee aſſigned him in his matter of Defence; which being granted him at the Day hee maketh Default, and

☞ *What Recoueries are.*

Common Voucher one of the Criers of the Court.

and thereupon the Court is to giue iudgement againſt him which cannot bee for him to looſe his Lands, becauſe hee hath it not; but the partie that hee hath ſold it to, hath that who vouched him to warrant it.

☞ *Iudgement for the Demaundant againſt the Tenant in taile.*

Therefore the Demaundant who hath no defence made againſt it, muſt haue Iudgement to haue the Land againſt him that hee ſued (who is called the Tenant) and the Tenant is to haue Iudgement againſt *I.H.* to recouer in value ſo much Land of his, where in truth hee hath none, nor neuer will. And by this Deuice grounded vpon the ſtrict Principles of Law, the firſt Tenant looſeth the Land, and hath nothing for it; but it is his owne agreement for aſſurance to him that bought it.

Iudgement for the Tenant to recouer ſo much land in value of the Common voucher.

☞ *A recouery barreth an Eſcheat taile and all reuerſions and remaindments thereupon.*

This Recouerie barreth Entayles, and all Remainders and reuerſions that ſhould take place after the Entayles, ſauing where the King is giuer of the Entayle and keepeth the Reuerſion to himſelfe; then neyther the Heyre, nor the Remainder, nor Reuerſion, is barred by the recouerie.

The

The reaſon why the Heires, Remainders, and Reuerſions are thus barred, is becauſe in ſtrict Law the recompence adjudged againſt the Cryer that was Vouchee, is to goe in ſucceſſion of Eſtate as the Land ſhould haue done, and then it was not reaſon to allow the Heire the libertie to keepe the Land it ſelfe, and alſo to haue recompence; and therefore hee looſeth the Land, and is to truſt to the Recompence.

☞ *The reaſon why a Common Recovery barreth thoſe in Remainder and Reverſions.*

This ſleight was firſt invented, when Entayles fell out to bee ſo inconvenient as is before declared, ſo that men made no Conſcience to cut them off, ſo they could finde Law for it. And now by vſe, thoſe Recoveries are become common aſſurances againſt Entayles, Remainders, and Reverſions, and the greateſt ſecurity Purchaſers haue for their monyes; for a Fine will barre the Heire in tayle, but not the Remainder, nor Reverſion, but a common Recovery will barre them all.

☞ *The manie inconveniencies of eſtates in tayle brought in theſe Recoveries, Which are made now common conveyances and aſſurances for Land.*

Vpon Feofments and Recoveries, the eſtate doth ſettle as the vſe and intent of the parties is declared by word or writing, before the Acts was done; As for

Vpon Fines, Feofments, and Recoveries, the eſtate doth ſettle according to the intent of the parties.

example. If they make a writing, that one of them ſhall leavie a Fine, make a Feoſment, or ſuffer a common Recoverie to the other; but the vſe and intent is, that one ſhould haue it for his life, and after his deceaſe, a ſtranger to haue it in Tayle, and then a third in Fee-ſimple. In this caſe the Lord ſetteth an eſtate according to the vſe and intent declared; And that by reaſon of the Statute made 27. HENRY 8. Concerning the Land in poſſeſſion to him that hath intereſt in the vſe or intent of the Fine, Feoſment, or Recoverie; according to the vſe and intent of the parties.

☞ *Bargaines Sales and Covenant to ſtand ſeized to a vſe, are all grounded vpon one Statute.*

Vpon this Statute is likewiſe grounded the fourth and fifth of the ſix Conveyances, *viz.* Bargaines, Sales, Covenants, to ſtand ſeized to vſes; For this Statute, whereſoever it findeth an vſe, conjoyneth the poſſeſſion to it, and turneth it into like quality of Eſtate, Condition, Rent and the like, as the vſe hath.

☞ *What a vſe is.*

The vſe is but the equity and Honeſtie to hold the Land in *Conſcientia boni viri.* As for example, I and you agree that I ſhall

ſhall giue you money for your Land, and you ſhall make no aſſurance of it. I pay you the money, but you made mee no aſſurance of it. Yet the equitie and Honeſtie to haue it is with mee; and this equity is called the Vſe, vpon which I had no remedie but in Chancerie, vntill this Statute made 27. HENRY 8. and now this Statute conjoyneth and containeth the Land to him that hath the vſe. I for my money paid to you, haue the Land it ſelfe, without any other Conveyance from you; and is called a Bargaine and Sale.

Before 27. H. 8. *there was no remedie for a vſe, but in Chancerie.*

But the Parliament that made the Statute did foreſee, that it would bee miſchievous that mens Lands ſhould ſodainly vpon the paiment of a little money bee taken from them, peradventure in an Alehouſe or a Taverne vpon ſtraineable advantages, did therefore gravely provide an other Act in the ſame Parliament, that the Land vpon payment of this money ſhould not paſſe away, except there were a Writing Indented, made betweene the ſaid two Parties, and the ſaid Writing alſo within ſix Moneths,

The Stat. of 27. H. 8. *doth not paſſe Land vpon the payment of mony without a deed indented and Enrolled.*

The Stat. of 27. of H. 8. extendeth not into Cities and Corporate Townes where they did vſe to Enroll Deeds.

Inrolled in ſome of the Courts at Weſtminſter, or in the Seſſions Rolles in the Shire, where the Land lyeth; vnleſſe it bee in Cities or Corporate Townes, where they did vſe to Enroll Deeds, and there the Statute extendeth not.

☞ *A conueyance to ſtand ſeized to a vſe.*

The fifth Conveyance of a Fine; is a Conveyance to ſtand ſeized to vſes, it is in this ſort; A man that hath a Wife and Children, Brethren and Kinſfolkes, may by writing vnder his Hand, and Seale; agree, that for him, they or any of their Heires, hee will ſtand ſeized of his Lands to their vſes, eyther for Life in Tayle or Fee, ſo as hee ſhall ſee cauſe; vpon which agreement in Writing, their ariſeth an Equitie or Honeſtie, that the Land ſhould goe according to thoſe agreements; Nature and Reaſon, allowing theſe proviſions, which Equitie and Honeſtie is the vſe. And the vſe beeing created in this ſort, the Statute of 27, HENRY the Eight, before mentioned; conteyneth the Eſtate of the Land, as the vſe is appointed.

Vpon an agreement in writing to ſtand ſeized to the vſe of any of his kindred. A vſe may be created and the eſtate of the land thereupon executed, by 27. H. 8.

And ſo this Covenant to ſtand ſeized to vſes, is at this day ſince the ſaid Statute, a Conveyance of Land, and with this difference, from a Bargaine and ſale; in that this needeth no Enrollment as a Bargaine and Sale doth, nor needeth it to bee in writing Indented, as Bargaine and Sale muſt, and if the partie to whoſe vſe hee agreeth to ſtand ſeized of the Land, bee not Wife, or Child, Couzen, or one that hee meaneth to marry; then will no vſe riſe, and ſo no Conveyance; for although, the Law alloweth ſuch weightie Conſiderations of Mariage and bloud to raiſe vſes, yet doth it not admit ſo trifling Conſiderations, as of Acquittance, Schooling, Services, or the like.

☞ *A Covenant to ſtand ſeized to a vſe needeth no Enrolment as a Bargaine and Sale to a vſe doth, ſo it bee to the vſe of Wife, Child, or Cozen, or one hee meaneth to marry.*

But where a man maketh an eſtate of his Land to others, by Fine, Feofment or Recoverie, hee may then appoint the vſe to whom hee liſteth, without reſpect of Marriage, Kindred, Money or other things; for in that caſe, his owne Will and Conſideration, guideth the equity of the Eſtate. It is not ſo when hee maketh no eſtate, But agreeth to ſtand ſeized,

☞ *Vpon a Fine, Feofment or Recoverie, a man may limit the vſe to whom hee liſteth, without Conſideration of bloud, or money. Otherwiſe, In a Bargaine and Sale or Covenant.*

nor when hee hath taken any thing, as in the caſes of Bargaine and Sale, and Covenant to ſtand to vſes.

☞ *Of the continuance of Land by will.*

The laſt of the ſix Conueyances, is a Will in writing; which courſe of Conveyance, was firſt ordained by a Statute made 32. HENRY 8. Before which Statute, no man might giue Land by will; except it were in a Borrough-Towne, where there was an eſpeciall cuſtome, that Men might giue their Lands by will; as in London, and many other places.

☞ *The not diſpoſing of Lands by Will, was thought to bee a defect at the Common Law.*

The not-giving of Land by Will, was thought to bee a defect at Common Law, that men vnawares or ſudainely falling ſicke, had not power to diſpoſe of their Lands, except they could make a Feoſment, or leavie a Fine, or ſuffer a Recoverie; which lacke of time would not permit, and for men to doe it by theſe meanes, when they could not vndoe it againe, was hard; beſides, even to the laſt houre of death, mens minds might alter vpon further proofes of their

their Children or Kindred, or encreaſe of Children or debt, or defect of Servants, or friends to be altered.

For which cauſe, it was reaſon that the Law ſhould permit him to Reſerue to the laſt inſtant, the diſpoſing of his Lands, and to giue him meanes to diſpoſe it, which ſeeing it did not fully ſerue, men vſed this deuiſe.

☞ *The Court that was inuented before the Stat. of 32. H. 8. which firſt gaue power to deuiſe Lands by Will, which was a Conueyance of Lands to Feoffors in truſt, to ſuch perſons as they ſhould declare in their Will.*

They conveyed their full eſtates of their Lands in their good health, to friends in truſt; properly called Feoffees in truſt, and then they would by their wils declare how their Friends ſhould diſpoſe of their Lands and if thoſe Friends would not performe it, the Court of Chancery was to compell them, by reaſon of the truſt; and this truſt was called, the vſe of the Land; ſo as the Feoffees had the Land, and the partie himſelfe had the vſe, which vſe was in equity, to take the profits for himſelfe, and that the Feoffees ſhould make ſuch an eſtate as hee ſhould appoint them; and if hee appointed none, then that the vſe ſhould goe to the heire, as the eſtate it ſelfe of the Land ſhould

ſhould haue done, for the vſe was to the Eſtate, like a ſhadow following the bodie.

☞ *The inconveniencies of putting Lands into vſe.*

By this courſe of putting Lands into vſe, there were many Inconveniencies; as this vſe which grew firſt for a reaſonable cauſe, *viz.* To giue men power and libertie to diſpoſe of their owne, was turned to deceiue many of their juſt and reaſonable rights; As namely, a man that had cauſe to ſue for his Land, knew not againſt whom to bring his action, nor who was owner of it. The wife was defrauded of her thirds. The Husband of beeing Tenant by curteſie. The Lord of his Wardſhip, Reliefe, Heriot, and Eſcheat. The Creditor of his Extent for Debt. The poore Tenant of his Leaſe; for theſe rights and duties were giuen by the Law from him that was owner of the Land, and none other. Which was now the Feoffee of truſt, and ſo the old owner which wee call the Feoffor ſhould take the profits, and leaue the power to diſpoſe of the Land at his diſcretion to the Feoffee, and yet hee was not ſuch a Tenant to bee ſeized of the Land as his Wife could haue Dower, or the Lands

bee

bee extended for his Debts, or that hee could forfeit it for Felonie or Treason, or that his Heire could bee in warres for it, or any duty of Tenure fall to the Lord by his Death, or that hee could make any Leases of it.

Which frauds by degrees of time as they encreased, were remedied by diuers Statutes; as namely, by a Statute of 1. HENRY, 6. and 4. HENRY, 8. It was appointed that the Action may bee tryed against him which taketh the profits, which was then Cesty and vse by a Statute made, 1. RICHARD, 3. Leases and Estates made by Cesty and Vse are made good, and Estatutes by him acknowledged 4. HENRY, 7. the Heire of Cesty and vse is to bee in Ward, 16. HENRY, 8. The Lord is to haue Reliefe vpon the death of any Cesty and vse.

1. H. 8.
4. H. 8.
1. R. 3.
4. H. 7.
16. H. 8.
} Stat binding Cesty and vse.

☞ *The frauds of conueyances to vse by degrees of time, as they encreased, were remedied by the Statutes.*

Which frauds nevertheleſſe multiplying dayly, in the end 27. HENRY 8. *reduced the Law to the ancient forms of Conveyances of Land, by Feoffments, Fine, and Recoveries.*

☞ 27 H 8. *taking away all vses*

the Parliament purpoſing to take away all thoſe Vſes, and reducing the Law to the the ancient forme of Conveying of Lands by publike Liverie of Seizen, Fine, and Recoverie; did ordaine, that where Lands were put in truſt or vſe, there the poſſeſſion and eſtate, ſhould bee preſently carryed out of the Friends in truſt, and ſetled and inveſted on him that had the Vſes, for ſuch tearme and Time as hee had the Vſe.

☞ *In What manner the Stat. of* 32. H. 8. *giueth power to diſpoſe of Lands by Will.*

By this Statute of 27. HENRY, 8. the power of diſpoſing Lands by Will, is clearely taken away amongſt thoſe frauds, and ſo the Statute did *Diſponore juſtum cum Imperio*; Whereupon 32. HENRY, 8. an other Statute was made, to giue men power to giue Lands by Will in this ſort. Firſt, it muſt bee by Will in writing. Secondly, hee muſt bee ſeized of an Eſtate in Fee-ſimple (For Tenant for an other mans Life) or Terme in Tayle, cannot giue Land by Will, by that Statute 3. hee muſt bee ſolely ſeized, and not joyntly with an other; and then beeing thus ſeized for all the Land hee holdeth in Soccage Tenure, hee may giue it by the Will. except he hold any peece of Land in *Capite* by Knight Ser-

vice

vice of the King, and laying all his lackes together, he can giue but two parts by Will; for the third part of the whole, as well in Soccage, as in *Capite* must descend to the Heire, to answere Wardship, Liverie and Seizen, to the Crowne.

If a Man bee seized of Capite *Lands and Soccage, he cannot deuise but two parts of the whole.*

And so if hee hold Lands by Knights Service of a Subject, hee can deuise of the Lands but two parts, and the third, the Lord by Wardship, and the Heire by descent is to hold.

☞ *The third part must descend to the Heire to answere Guardship, Livery and Seizen to the Crowne.*

And if a man that hath three Acres of Land holden in *Capite* by Knights Service, doe make a Ioynture to his Wife of one, and convey an other to any of his Children, or to Friends, to take the profits, and to pay his Debts or Legacies, or Daughters Portions, then the third Acre or any part thereof hee cannot giue by Will, but must suffer it to descend to the Heire, and that must satisfie Wardship.

☞ *A Conueyance by deuise of* Capite *Lands to the Wife for her Ioynture, or to his Children for their good, or to pay Debts is void for a third part, by* 32. H. 8.

☞ *But a Conveyance by Act executed in the life time of the partie of such Lands to such vses is not void, but a third part: but if the heire be within age, he shal have one of the Acres to be in Ward.*

Yet a Man having three Acres as before, may convey all to his wife or Children by Conveyance in his Life time, as by Feofment, Recoverie, Bargaine and Sale, or Covenant to ſtand to vſes, and to diſ-inherit the Heire. But if the Heire bee within age, when his Father dyeth, the King or other Lord ſhall haue that Heire in Ward, and ſhall haue one of the three Acres during the Wardſhip, to ſue Liverie and Seizen. But at full age the Heire ſhall haue no part of it, but it ſhall goe according to the Conveyance made by the Father.

Afflictis.
Afflictione.
Addere.

☞ *Entayled Lands part of the thirds.*

The King nor Lord cannot intermeddle if a full third part be left to deſcend to the Heire.

It hath beene debated how the thirds ſhall bee ſet foorth, For it is the vſe that all Lands which the Father leaveth to deſcend to the Heire beeing Fee ſimple, or in tayle, muſt bee part of the thirds; and if it bee a full third, then the King, nor Heire, nor Lord, can intermeddle with the reſt; If it bee not a full third, yet they muſt take it ſo much as it is, and haue a ſupply out of the reſt.

This

This ſupply is to bee taken thus, if it bee the Kings Ward, then by a Commiſſion out of the Court of Wards, whereupon a Iury by oath, muſt ſet downe ſo much as ſhall make vp the thirds, except the Officers of the Court of Wards, can otherwiſe agree with the parties. If there bee no Wardſhip due to the King, then the other Lord is to haue a ſupply by a Commiſſion out of the Chancerie, and a Iury thereupon.

☞ *The manner of making ſupply when the part of the heire is not a full third.*

But in all thoſe caſes, the Statutes doe giue power to him that maketh the Will to ſet foorth and appoint of himſelfe, which Lands ſhall goe for the thirds, and neither King nor Lord can refuſe it. And if it bee not enough, yet they muſt take that in part, and onely haue a ſupply in manner as before is mentioned out of the reſt.

☞ *The Statute giueth power to the Teſtator to ſet out the third himſelfe, and if it bee not a third part, yet the King or Lord muſt take that in part, and haue a ſupply out of the Rent*

Propertie in Goods.

Of the severall wayes whereby a man may get Propertie in Goods or Chattels.

1. By Guift.
2. By Sale.
3. By Stealing.
4. By Waiuing.
5. By Straying.
6. By Shipwracke.
7. By Forfeiture.
8. By Executorship.
9. By Administration.
10. By Legacie.

[redacted]*by guift*

☞ *A deed of guift of goods to deceiue his Creditors is void against them, but good against the Executors, Admin. or Vender of the partie himselfe.*

BY guift, Propertie is when the property of Goods may be passed by word or writing, but if there bee a generall Deed of Guift made of all his Goods, this is suspitious to bee done vpon fraud, to deceiue the Creditors.

And if that a man who is in Debt, make a Deed of guift of all his Goods to protract

tract the taking of them in Execution for his debt, this Deed of Guift is void, as againſt thoſe to whom hee ſtood indebted, but as againſt himſelfe his owne Executors or Adminiſtrators, or any man to whom afterwards hee ſhall ſell or Convey them, it is good.

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2. *By Sale.*

PRopertie in Goods by Sale. By Sale any man may convey his owne Goods to another, and although hee may feare Execution for Debts, hee may ſell them out-right for money at any time before the Execution ſerved, ſo that there be no reſervation of truſt betweene them, yet providing the money, hee ſhall haue the goods againe; for that truſt in ſuch caſe, doth proue plainely a fraud to prevent the Creditors from taking the goods in Execution.

☞ *What is a Sale bona fide and what not, when there is a private reſervation of truſt betweene the parties.*

Proper-

3. *By Theft or taking in Ieſt.*

☞ *How a Sale in Market ſhall bee a barre to the owner.*

PRopertie of Goods by Theft or taking in Ieſt. If any Man ſteale my Goods or Chattels, or take them from mee in Ieſt, or borrow them of mee, or as a Traitor or Felon carry them to the Market or Faire, and there ſell them, this Sale doth barre mee of the propertie of my Goods, ſaving that if hee bee a horſe hee muſt bee ridden two houres in the Market or Faire, betweene Ten and fiue a clocke, and Tolled for in the Tolle-Booke, and the ſeller muſt bring one to avouch his ſale knowne to thee Tolle-booke-keeper, or elſe the ſale bindeth mee not. And for any other goods, where the Sale in a Market or faire ſhall barre the owner beeing not the ſeller of his Propertie.

☞ *Of Markets and what Markets ſuch a Sale ought to be made in.*

It muſt bee ſale in a Market or Faire where vſuall things of that Nature are ſold. As for example, if a man ſteale a Horſe, and ſell him in Smithfield, the true owner is barred by this Sale; but if he ſell

ſell the Horſe in Cheapeſide, Newgate or or Weſtminſter market, the true owner is not barred by this Sale; becauſe, theſe Markets are vſuall for fleſh, Fiſh, &c. and not for Horſes.

So whereas by Cuſtome of *London*, every Shop there is a Market all the dayes of the weeke, ſauing Sundayes and Holydayes; Yet, if a peece of Plate, or Iewell that is loſt, or Chaine of Gold or Pearle that is ſtolne or borrowed, be ſold in a Drapers or Scriueners Shop, or any others but a Goldſmith, the Sale barreth not the true owner, *Et ſic in Simili.*

Yet by ſtealing alone of the Goods, the Thiefe getteth not ſuch propertie, but that the owner may Seize them againe whereſoeuer hee findeth them; except they were ſold in Faire or Market, after they were ſtolne; and that *bona fide*, without fraud.

☞ *The owner may Seize his goods after they are ſtolne.*

If the Thiefe be condemned for Felonie, or outlawed, or forfeit the ſtolne goods to the Crowne, the owner is without remedie.

But if the Thiefe bee condemned of the Felonie, or outlawed for the ſame, or outlawed in any perſonall Action, or haue committed a forfeiture of the Goods to the Crowne, then the true owner is without remedie.

But if hee make freſh purſuit hee may take his goods from the Thiefe.

Nevertheleſſe if freſh after the goods were ſtolne, the true owner maketh purſuit after the Thiefe and Goods, and taketh the Goods with the Thiefe, hee may take them againe; And if hee make no freſh purſuit, yet if hee proſecute the Felon, ſoe farre as Iuſtice requireth.

Or if hee proſecuted the law againſt the Thiefe and convict him of the ſame Felonie he ſhall haue his goods againe, by a writ of Reſtitution.

This is to haue Arraigned, Indicted, and found guilty (though hee bee not hanged, nor haue Iudgement of Death) in all theſe caſes hee ſhall haue his goods againe, by a writ of Reſtitution, to the partie in whoſe hands they are.

4. By

4. *By wayuing of Goods.*

BY Wayuing of Goods, a propertie is gotten thus. A Thiefe hauing ſtolne goods beeing perſued flyeth away and leaueth the goods, This leauing is called Wauing, and the propertie is in the King; except the Lords of the Mannor haue right to it, by Cuſtome or Charter.

But if the Felon bee Indicted or adjudged, or found guiltie, or outlawed at the ſuit of the Owner of theſe goods, hee ſhall haue Reſtitution of theſe goods, as before.

5. *By Straying.*

BY Straying, propertie in liue Chattels, is thus gotten. When they come into other mens grounds, then the partie or Lord into whoſe grounds or Mannors they come, cauſeth them to bee ſeized,

and a With put about their neckes, and to bee cryed in three Markets adjoyning, ſhewing the markes of the Chattell; which done, if the true owner claymed them not within a Yeare and a day, then the propertie of them is in the Lord of the Mannor whereunto they did ſtray; If hee haue all ſtrayes by Cuſtome or Charter, elſe to the King.

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6. *Wracke, and when it ſhall be ſaid to bee.*

BY Shipwracke, propertie of Goods is gotten. When a Ship loaden is caſt away vpon the Coaſts, ſo that no living Creature that was in it when it began to ſinke eſcapeth to Land with life, then all thoſe Goods are ſaid to bee wracked, and they belong to the Crowne if they can bee found; except the Lord of the Soyle adjoyning, can intitle himſelfe vnto them by Cuſtome, or by the Kings Charter.

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7. *Forfeitures.*

BY Forfeitures, Goods and Chattels are thus gotten; If the Owner bee outlawed, if hee bee indicted of Felonie, or Treaſon, or eyther confeſſe it, or bee found guilty of it, or refuſe to bee tryed by Peeres or Iury, or bee attainted by Iury, or flye for Felony although hee bee not guilty, or ſuffer the Exigent to goe foorth againſt him; although he bee not outlawed, or goe over the Seas without licenſe, all the goods hee had at the Iudgement, he forfeiteth to the Crowne; except ſome Lord by Charter can claime them. For in thoſe caſes preſcripts will not ſerue, except it bee ſo ancient, that it hath had allowance before the Iuſtices in Eyre in theyr Circuits, or in the Kings Bench in ancient time.

8. *By Executorſhip.*

BY Executorſhip, goods are gotten. When a man is poſſeſſed of Gods maketh his Laſt Will and Teſtament in writing or by Word, and maketh one or more Executors thereof; Theſe Executors, haue by the Will and death of the parties, all the propertie of their Goods, Chattels, Leaſes for Yeares, Wardſhips and Extents, and all right concerning thoſe things.

☞ *Executors may before* probat *diſpoſe of the goods, but not bring an action for any debt.*

Thoſe Executors may meddle with the Goods, and diſpoſe them before they proue the Will, but they cannot bring an action for any Debt or duety, before they haue proved the Will.

The

The prouing of the Will is thus. They are to exhibite the Will into the Byſhops Court, and there they are to exhibite the Will into the Byſhops Court, and there they are to be ſworne and the Byſhops Officers are to keepe the Will Originall, and certifie the Copie thereof in Parchment vnder the Byſhops Seale of Office, which Parchment ſo ſealed, is called the Will proved.

☞ *What probat. of the Will is, and in what manner it is made.*

9. *By Letters of Administration.*

BY Letters of Administration, propertie in goods is thus gotten. When a man possessed of goods dyeth without any Will, there such things as the Executors should haue had if he had made a Will, were by ancient Law to haue come to the Byshop of the Dioceſſe, to dispose for the good of his Soule that dyed, he first paying his Funerals and Debts, and giving the rest *Ad pios vſus.*

Pij Vſus.

This is now altered by Statute Lawes, so as the Bishops are to graunt Letters of Administration of the goods at this day to the Wife if shee require it, or Children or next of kin; If they refuse it, as often they doe, because the debts are greater then the estate will beare, then some Creditor or some other will take it as the Byshops Officers shall thinke meet. It groweth often in question what Byshop shall haue the right of proving Wills, and graunting Administration of goods.

In

In which Controuerſie the rule is thus. That if the partie dead had at the time of his Death *Bona notabilia* in diuers Dioceſſe of ſome reaſonable value, then the Arch-biſhop of the Prouince where hee dyed is to haue the approbation of his Will, and to graunt the Adminiſtration of his goods as the caſe falleth out; otherwiſe, the Biſhop of the Dioceſſe where hee dyed is to doe it.

☞ *Where the Inteſtate had* Bona notabilia *in diuers Dioceſſe, then the Archbiſhop of that Prouince where hee dyed is to commit the Adminiſtration.*

If there bee but one Executor made, yet hee may refuſe the Executorſhip coming before the Biſhop, ſo that hee hath not entermedled with any of the goods before, or with receiuing Debts, or paying Legacies.

☞ *Executor may refuſe before the Biſhop, if hee haue not intermedled with the goods.*

And if there bee more Executors then one, ſo many as liſt may refuſe; and if any one take it vpon him, the reſt that did once refuſe may when they will take it vpon them, and no Executor ſhall bee further charged with Debts or Legacies, then the value of the Goods come to his hands; So that hee fore-ſee, that hee pay Debts vpon Record, debts to the King; Then vpon Iudgements;

☞ *Executor ought to pay,*
1 *Iudgements.*
2 *Stat. Recogn:*
3 *Debts by bonds and bills ſealed.*
4 *Rent vnpayed.*
5 *Seruants wages*
6 *Head workmen*
7 *Shop-booke and Contracts by Word.*

Statutes, Recognizances, then Debts by Bond and Bill ſealed, Rent vnpayed, Seruants wages, payment to head workmen; and laſtly, Shop-bookes, and contracts by Word. For if an Executor, or Adminiſtrator pay debts to others before to the King, or Debts due by Bond before thoſe due by Record, or debts by Shop-bookes and Contracts before thoſe by Bond, arrerages of Rent, and Seruants wages, hee ſhall pay the ſame ouer againe to thoſe others in the ſayd degrees.

☞ *Debts due in equall degree of Record, the Executor may pay which of them hee pleaſe before ſuit commenced.*

But yet the Law giueth them choyce, that where diuers haue Debts due in equall degree of Record or ſpecialty, hee may pay which of them hee will, before any ſuite brought againſt him; but if ſuite bee brought hee muſt firſt pay them that get Iudgement againſt him.

☞ *Any one Executor may doe as much as all together, but if a debt be releaſed and Aſſets wanting, he ſhall only be diſcharged.*

Any one Executor may conuey the Goods, or releaſe Debts without his companion, and any one by himſelfe may doe as much as altogether; but one mans releaſing of Debts or ſelling of Goods, ſhall not Charge the other to pay ſo much of the Goods, if there bee not enough to pay debts; but, it ſhall charge the party himſelfe that did ſo releaſe or conuey.

But

But it is not so with Administrators, for they haue but one authoritie giuen them by the Bishop ouer the goods, which authoritie beeing giuen to many is to bee executed by all of them joyned together.

☞ *Otherwise of Administrators.*

And if an Executor dye making an Executor, the second Executor is Executor to the first Testator.

☞ *Executor dyeth making his Executor, the second Executor shall be Executor to the first Testator.*

But if an Administrator dye intestate, then his Administrator shall not bee Executor to the first; But in that Case the Bishop, whom wee call the Ordinarie is to commit the Administration of the first Testators goods to his Wife, or next of kinne, as if hee had dyed intestate; Alwayes prouided, that, that which the Executor did in his life-time, is to bee allowed for good. And so if an Administrator dye and make his Executor, the Executor of the Administrator shall not bee Executor to the first intestate; But the Ordinarie must new commit the Administration of the goods of the first Intestate.

☞ *But otherwise, if the Administrator dye making his Executor, or if Administration be committed of his goods. In both cases, the Ordinarie shall commit Administration of the goods of the first Intestate.*

Againe, if the Executor or Administrator pay Debts, or Funerals, or Legacies of his owne money hee may retaine so much of the goods in kind, of the Testa-

☞ *Executors or Administrators may reteyne.*

tor or inteſtate, and ſhall haue propertie of it in kind.

10. *Propertie by Legacie.*

PRopertie by Legacie, is where a man maketh a Will and Executors, and giueth Legacies, hee or they to whom the Legacies are giuen muſt haue the aſſent of the Executors or one of them to haue his Legacie, and the propertie of that Leaſe or other goods bequeathed vnto him, is ſayd to bee in him; but hee may not enter nor take his Legacie without the aſſent of the Executors or one of them; becauſe, the Executors are charged to pay Debts before Legacies. And if one of them aſſent to pay Legacies hee ſhall pay the value thereof of his owne purſe.

☞ *Executors or Adminiſtrators may retaine; becauſe the Executors are charged to pay ſome debts before Legacies.*

But this is to bee vnderſtood, by debts of Record to the King, or by Bill and Bond ſealed, or arrerages of Rent, or Seruants or Workmens wages; and not debts of Shop-bookes, or Bills vnſealed, or Contract by word; for before them Legacies are to bee payed.

☞ *Legacies are to bee payed before debts by Shopbookes. Bils vnſealed, or Contracts by word.*

And

And if the Executors doubt that they ſhall not haue enough to pay euery Legacie, they may pay which they lift firſt; but they may not ſell any ſpeciall Legacie which they will to pay Debts, or a Leaſe of goods to pay a money Legacie. But they may ſell any Legacie which they will to pay Debts, if they haue not enough beſides.

☞ *Executor may pay which Legacie hee will firſt.*

If the Executors doe want they may ſell any Legacie to pay Debts.

If a man make a Will and make no Executors, or if the Executors refuſe, the Ordinarie is to commit Adminiſtration *Cum Teſtamento annexo*, and take bonds of the Adminiſtators to performe the Will, and hee is to doe it in ſuch ſort, as the Executor ſhould haue done if hee had beene named.

☞ *When a Will is made and no Executor named, Adminiſtration is to bee committed* Cum teſtamento annexo.

FINIS.